

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

with affidavits

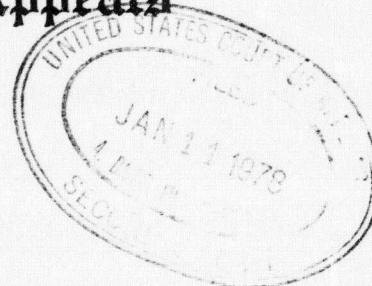
77-6088

B

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-6088



ISRAEL MILLSAP,
Plaintiff-Appellant,

—v.—

CITY OF NEW YORK,
Defendant,

—and—

DONALD E. JOHNSON, or his successor,
Veterans Administration,
Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX TO APPELLEE'S BRIEF

ROBERT B. FISKE, JR.,
*United States Attorney for the
Southern District of New York,
Attorney for Defendant-Appellee.*

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ISRAEL MILLSAP,
PLAINTIFF

-v-

D.E. JOHNSON OR HIS SUCCESSOR;
VETERANS ADMINISTRATION

-----X United States District Court
For the Southern District of
New York

Case No. 75 Civ 5160

Judge Heights

-----X
INDEX TO THE RECORD ON APPEAL

DOCUMENTS

Certified Copy of Docket Entries

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Petition for removal
- Answer
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Plaintiff's affidavit
Memorandum of law of Defendant's atty
Endorsement order
Answer
Plaintiff's notice to take deposition
Defendant's notice of motion
Pre-trial order of Judge Stewart dtd: 7/7/76
Govt's memorandum of law
Affidavit of plaintiff
Opinion # 44875
Supplemental memorandum of law
Affidavit of plaintiff
Opinion # 45852
Notice of appeal
Clerk's Certificate

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19

75 Civ 5160
Trans to USCA
5/5/77

Attch'd to Entry
attached

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A . 2

-----X
ISRAEL MILLSAP

CASE NO. 75 Civ 5160

-v-
D.E. JOHNSON AND VETERANS ADMIN.

JUDGE H. Aight

CLERK'S CERTIFICATE

-----X
I, RAYMOND F. BURGHARDT, Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the certified copy of docket entries lettered A- C, and the original filed papers numbered 1 thru 19, and exhibits _____, inclusive, constitute the record on appeal in the above entitled proceeding; except for the following missing documents:

DATE FILED

PROCEEDINGS

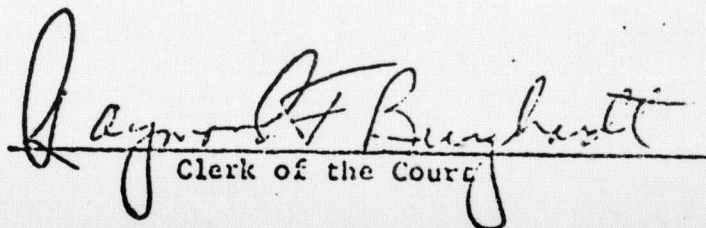
11-19-75

Filed platff's notice of motion for discovery

4-14-76

Filed platff's notice of motion for discovery

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 5th day of May, in the year of our Lord, One thousand nine hundred and seventy seven, and of the Independence of the United States the 201st year.


Clerk of the Court

A 3

DIST/OFFICE	DOCKET YR. NUMBER	FILING DATE MO DAY YEAR	J	N/S	O	R	R 23	DEMAND OTHER	JUDGE NUMBER	JURY DEM.	DOCKET YR. NUMBER
208-1	75 5160	10 20 75	2	190	2			15,	0851 085		75 5160 Pierce J.

PLAINTIFFS

MILLSAP, ISRAEL

DEFENDANTS

JOHNSON, D.E. OR HIS SUCCESSOR;
VETERANS ADMINISTRATION

CAUSE

Action to recover money paid for property.

TS

ATTORNEYS

Israel Millsap (Pro Se)
9537 Prairie Avenue South
Chicago, Illinois 60628

U.S. Attorney, S.D.N.Y.
V. Pamela Davis, A.U.S.A.
1 St. Andrew's Plaza, N.Y.C. 10007
791-1967

☐ CHECK
HERE
IF CASE WAS
FILED IN
FORMA
PAUPERIS

FILING FEES PAID	
DATE	RECEIPT NUMBER
OCT 20 1975	ALSA
C.D. NUMBER	

STATISTICAL CARDS	
CARD	DATE MAILED
JS-5	
JS-6	5-2-77

JUDGE WRIGHT

MILLSAP, ISRAEL -v- JOHNSON, D.E. OR HIS SUCCESSOR, et ano.

75 Civ. 5160

A 4

DATE	NR.	PROCEEDINGS
10-20-75	1	Filed petition for removal from Supreme Court of Manhattan County.
11-6-75	2	Filed ANSWER of deft (U.S.ATTY) to the complaint. U.S. ATTY.
11-19-75	3	Filed pliffs Notice of motion for discovery and for a Jury Trial as indicated before Pierce, J.
1-14-76	4	Filed Defts. Notice of Motion & supporting affidavit for an order dismissing the complaint. Ret. 1-30-76.
1-14-76	5	Filed Defts. Memorandum of Law.
1-12-76	6	Filed pliff Request to Pierce, J. for judgment by default etc, as indicated.
1-26-76	7	Filed letter from pliff dated 1-20-76 to Pierce, J. re: default judgment etc, as indicated.
2-9-76	8	Filed memo endorsed on motion filed 1-14-76. For the reasons stated the motion is denied, Pierce, J. M/N
2-19-76	9	Filed ANSWER of deft to the complaint. U.S. ATTY.
3-11-76	10	Filed pliffs Notice to take deposition of M. Vaughan and V. Vickroy Loan Guaranteed Office Veterans Administration at 252 7th Avenue, on 5-19-76 as indicated.
4-14-76	11	Filed pliffs Notice for a motion of discovery rtble before Pierce J. on 4-20-76 as indicated.
04-28-76	----	Mailed notice of reassignment of this action to Haight, J.
06-18-76	----	PRE-TRIAL CONFERENCE HELD BY Haight, J. - Govt. to make motion for protective order.
07-07-76	12	Filed Deft's. affidavit & notice of motion to dismiss the complaint or alternatively for a protective order, ret. 7-23-76.
07-07-76	13	Filed Deft's. memorandum of law in support of motion to dismiss.
07-07-76	14	Filed Pre-Trial Order - Depositions of Mr. Vaughn & Mr. Vickroy are adjourned to 8-19-76. Govt. to move for protective order or to dismiss by 7-7-76...Haight, J. (mailed notice)
07-27-76	15	Filed Affidavit of Israel Millsap, dtd. 7-27-76 etc, as indicated.
7-29-76	16	Filed Opinion #44875. Gov'ts. motion to dismiss is reserved, The parties are directed to submit add'l memoranda as indicated not later than 8/19/76, & depositions scheduled for that date are adjourned without date, pending further order of this court.....Haight J. (M/N)
08-19-76	17	Filed Govt's. supplemental memorandum of law in support of motion to dismiss.
08-19-76	18	Filed Pltff's. affidavit, dated 8-19-76.
5-2-77	19	Filed opinion # 45852 Pltff allegations (for cause of action) may not be brought in federal dist. court... deft's motion to dismiss is granted So ordered Haight J. m/n
5-4-77	20	Filed notice of appeal to the USCA for the 2nd Circuit from the memorandum decision #45852 of Judge Haight dtd: 5-2-77 by XXXX pro se pltff. M/N.
5-3-77	21	Filed opinion # 45863 deft motion to dismiss for lack of cause of action is granted.... So ordered Haight J. m/n (Duplicate Original)
5-5-77	22	Filed notice of transmission of record to USCA.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKA 5
U.S. DISTRICT COURT

FILED 10-20-75

S.D. of NEW YORK

ISRAEL MILLSAP,

Plaintiff,

-v-

D.E. JOHNSON OR HIS SUCCESSOR;
VETERANS ADMINISTRATION,

Defendants.

PETITION FOR REMOVAL

75 Civ. 5160

(LWR)

-----X

This petition of D.E. Johnson and the Veterans Administration, by V. Pamela Davis, Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York, attorney for petitioners, respectfully states on information and belief that:

1. On September 30, 1975, defendant Veterans Administration was apparently served with a copy of the Summons and Complaint of the plaintiff, together with an attached Notice of Disallowance from the City of New York, which Summons and Complaint and attachment are attached as Exhibit A.
2. The caption of the Complaint cites "Supreme Court of Manhattan County"; the Summons does not designate a county.
3. No further process or pleadings have been served by the defendants and nor orders have been noted to the defendants.
4. Defendant Veterans Administration is an agency of the United States of America; D.E. Johnson is Administrator of Veterans Affairs for the Veterans Administration.

5. The Complaint alleges that Plaintiff seeks judgment against the Veterans Administration in the amount of \$15,000 for an unstated cause of action arising out of the sale of certain property to the plaintiff by the Veterans Administration.

6. This is an action involving in excess of \$10,000 arising under the laws of the United States of America. Pursuant to Title 28, United States Code, section 1331(a), the United States District Court has original jurisdiction over such an action.

7. Pursuant to Title 28, United States Code, section 1441(a), a civil action brought in a State Court of which the District Courts of the United States have original jurisdiction may be removed to the appropriate United States District Court.

8. As defendant Veterans Administration is located in the Southern District of New York, this is the proper District Court.

WHEREFORE, it is respectfully requested that this action be removed to this Court.

Dated: New York, New York
October 17, 1975

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for Petitioners

By: V. PAMELA DAVIS
V. PAMELA DAVIS
Assistant United States Attorney
One St. Andrew's Plaza
New York, N. Y. 10007
Telephone (212) 791-1967

VERIFICATION

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

V. PAMELA DAVIS, being duly sworn, deposes and says that she is an Assistant United States Attorney for the Southern District of New York, and as such has charge of the above entitled action; that she has read the foregoing Petition for Removal and knows the contents thereof, and that the same is true of her own knowledge, except as to those matters herein stated to be alleged on information and belief and that as to those matters she believes it to be true.

That the sources of deponent's information and the grounds of her belief are official records and files of the United States.

That the reason this verification is made by deponent and not by United States of America is that United States of America is a corporation sovereign.

SWORN V. PAMELA DAVIS

V. PAMELA DAVIS
Assistant United States Attorney

Sworn to before me this

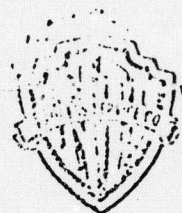
17 day of October 1975

LAWRENCE MASON
Notary Public, State of New York
No. 03-2572560
Qualified in Bronx County
Commission Expires March 30, 1977



Supreme Court of the State of New York
County of

Israel Miller



Plaintiff(s)

against

D. E. Johnson on his Successor
Veteran Administrator Defendant(s)

To the above named Defendant(s)

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Dated, 4-15-75

Defendant's Address: 2527 Ave

Attorney(s) for Plaintiff(s)
Office and Post Office Address

Notice: The object of this action is

The relief sought is

15,000

Upon your failure to appear, judgment will be taken against you by default for the sum of \$
with interest from 19 and the costs of this action.

Index No. 8
Plaintiff(s) design 15222

County as the place of trial
The basis of the venue is

Summons with Notice

Plaintiff(s) reside(s) at

9537 Prairie

County of Cook
Chicago

107 1 5 1075

UNITED STATES ATTORNEY
FOR DISTRICT OF COLUMBIA

SUPREME COURT TO JAMES
HARTEN
COUNTY

MS
9/30/78 A 9
J B D.

MILLER P.

VS

City of New York

DONALD E JOHNSON

OR HIS Successor

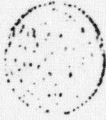
VETERAN ADMINISTRATION

~~City of New York~~ 1527 Ave

I have been Dolly Swann. I am
I am a Resident of Chicago ~~and live~~
now Resided and live in Ill state
The city of New York Democratic
my Building at 655 E 75 street
all Correspondent work during
with the Veteran administration
and they never let me know
about it. It was denied in 1974
but I never knew about may it
until May of this year 1978.
They satisfy the Veteran administration
of ~~the~~ all ~~the~~ ~~to~~ Every thing
thing that what the Record shows
that they wanted all money to
Veteran administration and ~~none~~ none
To me the Veteran administration
I also ask Judgement against the
City New York 25,000 and
15,000 against the Veteran admin.

for not notified me. They held
the mortg and they know they
Building was under Demolition
when they sold me SOS therefore
are I edgient agant the city new york
for Twenty five thousand dollar and the
Veteran administrator for Tellen Howard Chell

Donald M. M. M.
9537 Prairie Ave
Chicago Ill 60628
312 2396575



SEAL OF THE CITY OF NEW YORK
COMPTROLLER

THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
MUNICIPAL BUILDING
NEW YORK N. Y. 10007

TELEPHONE 356

A 11

Date August 7, 1975

Claim Number T - 348633

Israel Millsap

9537 Prairie Avenue South

Chicago, Illinois 60628

NOTICE OF DISALLOWANCE

YOUR CLAIM HAS BEEN DISALLOWED, for the reason indicated below.
However, if you wish to sue, you must start a law suit within one year and ninety days from the date of the occurrence.

- (X) You did not serve your claim within ninety days after the date of occurrence.
- (X) Our investigation indicated that there is no legal liability on the part of the City of New York.
- () Investigation indicates that a third party may be responsible for the occurrence, namely:

Name _____

Address _____

PAUL KLEINBERG
Chief, Division of Settlements
Bureau of Law and Adjustment

Claims Examiner: M. Lovinson/gd
506- 3914

And deponent further says that he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Courthouse, Foley Square, Borough of Manhattan, City of New York.

Sworn to before me this

day of

, 19

Will please take notice that a _____
with the within is a copy, was this day
entered in the within entitled action,
office of the Clerk of this Court.

_____ N. Y., _____, 19____

12

Yours, etc.,

A

United States Attorney
Attorney for _____

Attorney for _____

Will take notice that the within _____
is presented for settlement and sig-
nature of the Honorable _____
United States District Judge, at the office of
Room 601, United States Court-
house, Foley Square, Borough of Manhat-
tan, City of New York, on the _____ day of
_____, 19____, at 10:30 o'clock in the
_____ noon or as soon thereafter as coun-
sel can be heard.

_____ N. Y., _____, 19____

Yours, etc.,

United States Attorney
Attorney for _____

Attorney for _____

United States District Court

SOUTHERN DISTRICT OF NEW YORK

ISRAEL HILLSAP,

Plaintiff,

-v-

D.E. JOHNSON OR HIS SUCCESSOR;
VETERANS ADMINISTRATION,

Defendants.

PETITION FOR REMOVAL

75 Civ.

PAUL J. GUZMAN
TEL. 264-3311x
791-1967
United States Attorney
Attorney for USA

Due service of a copy of the within is here-
by admitted.

New York, _____, 19____

Attorney for

To

Attorney for

VPD:bj
M-1071

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A 13

Filed
11/6/75

~~7-368~~

75-3447

ISREAL MILLSAP

Plaintiff,

-v-

D. E. JOHNSON or his successor;
Veterans Administration

Defendants.

: ANSWER

: 75 Civ. 5160 (LWP)

Defendants, by their attorney, Thomas J. Cahill,
United States Attorney for the Southern District of New
York, for their answer to the complaint:

1. Deny the allegations of the two-page hand-
written complaint.

FIRST AFFIRMATIVE DEFENSE

2. This action is barred by the res judicata
effect of Isreal Millsap v. Donald Johnson, 72 Civ. 4418
(SJR) decided in February of 1974, motion for reconsideration
denied June 24, 1975, appeal pending, Docket No. 75-6071.

SECOND AFFIRMATIVE DEFENSE

3. This action is barred by the applicable
statute of limitations.

THIRD AFFIRMATIVE DEFENSE

4. This court lacks jurisdiction over the
subject matter of the complaint.

FOURTH AFFIRMATIVE DEFENSE

5. Plaintiff fails to state a claim upon
which relief can be granted.

VPD:bj
M-1071

A 14

WHEREFORE, defendants request judgment
together with costs and whatever relief as is just.

THOMAS J. CAHILL
United States Attorney for the
Southern District of New York
Attorney for Defendants

V. PAMELA DAVIS

By:

V. PAMELA DAVIS
Assistant United States Attorney
Office and Post Office Address
United States Courthouse
One St. Andrews Plaza
New York, N.Y. 10007
Telephone (212) 791-1967

Isreal Millsap
9537 Praire Avenue
Chicago, Illinois

being duly sworn,
deposes and says that he is employed in the office of _____
_____ United States Attorney for
the Southern District of New York, attorney for the _____
herein.

That on the _____ day of _____, 19____, he did serve a true copy of
the hereto annexed _____

on the office of _____
attorney for the _____ herein, located at _____

Borough of _____, City of New York, by leaving a true copy of the same with
the person in charge of said office, there being no one present who was authorized to give an ad-
mission of service.

Sworn to before me this

_____ day of _____, 19____

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF NEW YORK

SS

_____ Pauline P. Troia, _____ being duly sworn,
deposes and says that she is employed in the office of the United States Attorney for the Southern
District of New York.

That on the 6th day of November, 1975, he served a copy of the within
govt's answer

by placing the same in a properly franked envelope addressed to: _____
Israel Millsap,
9537 Praire Ave.
Chicago, Illinois

And deponent further says that she sealed the said envelope and placed the same in the mail chute
drop for mailing in the United States Courthouse, Foley Square, Borough of Manhattan, City of
New York.

Sworn to before me this

6th day of November, 1975

will please take notice that a _____
which the within is a copy, was this day
entered in the within entitled action,
office of the Clerk of this Court.

ed, N. Y., _____, 19____

Yours, etc.,

6
#1

United States Attorney
Attorney for _____

A

Attorney for _____

are take notice that the within _____
be presented for settlement and sig-
of the Honorable _____
States District Judge, at the office of
Room 601, United States Court-
Foley Square, Borough of Manhat-
City of New York, on the _____ day of
_____, 19____, at 10:30 o'clock in the
noon or as soon thereafter as coun-
be heard.

N. Y., _____, 19____

Yours, etc.,

United States Attorney
Attorney for _____

Attorney for _____

United States District Court

SOUTHERN DISTRICT OF NEW YORK

ISREAL MILLSAP

Plaintiff,

-v-

D. E. JOHNSON or his successor;
Veterans Administration

Defendants.

ANSWER

75 Civ. 5160 (LWP)

THOMAS J. CAHILL

TEL. 264-3211
XXXXX

United States Attorney
Attorney for USA

791-1967

Due service of a copy of the within is here-
by admitted.

New York, _____, _____

Attorney for

To

Attorney for

U.S. DISTRICT COURT
SOUTHERN DISTRICT

17

ISRAEL MILLSAP
PLAINTIFF

D. E. JOHNSON
OR His
SUCCESSOR
VETERAN
ADMINISTRATION
DEFENDANT

75 CIV 9166

NOTICE OF MOTION

I WILL APPEAR BEFORE THE
HON. Judge [unclear] I am
not certain of name because
U.S. attorney had it removed
from the ~~State~~ State Supreme
Court of New York at 1000 am
Nov 18-1975 for a MOTION
~~to~~ for Discovery and also
to for a Jury Trial
12 June.

Israel Millsap
9537 prairie
Chicago Ill 60627

Copy to V. Pamela Davis
ref US attorney
Copy to city new York
include counsel new York

1-19-76

Southern District of
New York

ISRAEL M. MILLER

US

D. F. Johnson

75C 5160 (W)

Hon. L. Pence

I would like to ask Judgment
By Default by the Default
for the Government
Failure to ans

Israel Miller
9537 Prairie
Chicago Ill
239 6575

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
ISREAL MILLSAP,

Plaintiff,

-v-

D.E. JOHNSON or his Successor
VETERANS ADMINISTRATION,

Defendants.
-----x

U.S.

1-14-76
NOTICE OF
MOTION

7560.5160 (LWP)

ret date 1/30/76
J

PLEASE TAKE NOTICE that, upon the annexed
affidavit of V. Pamela Davis, defendant will move this
Court on the 30th day of January, 1976, at 10:00 A.M.
in the forenoon in Room 518 of the United States Courthouse,
Foley Square, New York, New York, for an order dismissing
the complaint herein pursuant to Rule 12(b) of the Federal
Rules of Civil Procedure.

THOMAS J. CAHILL
United States Attorney for the
Southern District of New York
Attorney for Defendant

V. PAMELA DAVIS

By:

V. PAMELA DAVIS
Assistant United States Attorney
Office and Post Office Address
One St. Andrew's Plaza Rm. 537
New York, New York 10007
Tel: (212) 791-1967

To: Isreal Millsap
9537 Prarie Avenue
Chicago, Illinois 60628

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
ISREAL MILLSAP,

Plaintiff,

-v-

D. E. JOHNSON or his successor,
VETERANS ADMINISTRATION,

Defendants.

:
:
: AFFIDAVIT

: 75 Civ. 5160 (LWP)

-----x
STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

V. PAMELA DAVIS, being duly sworn, deposes and
says:

1. I am an Assistant United States Attorney in
the office of Thomas J. Cahill, United States Attorney for
the Southern District of New York, and, as such, am in
charge of the defense of the above-captioned action.

2. I make this affidavit in support of defend-
ant's motion to dismiss the complaint as barred by res
judicata.

3. This is an action, originally filed in State
Supreme Court, complaining of property purchased from the
defendant Veterans Administration by plaintiff.

4. Attached as Exhibit A is a complaint by the
same plaintiff against the same defendant which included
the same cause of action served on October 26, 1972.

5. Attached as Exhibits B and C are the opinion
and judgment in that earlier action, entered February 6,
1975 and February 7, 1975 respectively, granting defendants

6. On May 8, 1975, plaintiff moved to reopen the action which motion was referred by the Honorable Sylvester Ryan to Magistrate Harold Raby. The Magistrate's report is attached as Exhibit D. Judge Ryan denied the motion on June 24, 1975.

7. An appeal from the denial of the motion to reopen the action is now pending before the Court of Appeals for the Second Circuit. Plaintiff's submission which was filed with the notice of appeal is attached as Exhibit E.

8. The doctrine of res judicata bars the institution of the same cause of action by the same plaintiff against the same defendant following a previous determination on the merits of the action.

WHEREFORE, the complaint should be dismissed pursuant to Rule 12(b) of the Federal Rules of Civil Procedure.

V. PAMELA DAVIS

V. PAMELA DAVIS
Assistant United States Attorney

Sworn to before me this

12 day of January, 1976.

PAUL E. JEFF
Notary Public, State of New York
No. 41, 1975, Green County
Term Expires March 31, 1977

A 22

72 CIV. 4418

Southern District Court of New York
Israel Millsap, 350 West 23rd Street, New York

VS

Donald E. Johnson, Veterans Administration, Washington, D.C. 20420,
Administrator of Veterans Affairs.

1. On May 5th, 1972 I purchased a piece of property at 665 East 165 Street, Bronx, New York. I never saw this property until I bought it and my man did not report to me until July 1972. There are liens and violations all over the building and it is not fit for human beings to live in and I cannot get it fixed up. I am unable to get a loan on the building. Please instruct Arby A. Halpern to fix up this building and remove all liens and give me another building that is suitable for me to rent to people to live.

2. On May 5, 1972, I purchased a piece of property at 408 East 159th Street, Bronx, New York. This building is also in deplorable condition. The water is cut off from the street and they refuse to remove all liens and violation and they also said that I no longer own this property. Please instruct Arby A. Halpern and Silverman of the Loan Guarantee Department not to forbid me to go into this property until the Court has made a final decision and I therefore ask judgment for \$50,000.

3. I went to contract on 1167 Stebens Avenue, Bronx, New York. Arby A. Halpern instructed Hawley & Hawley, real estate agent to give him \$100.00. He promised to fixed the building up which he never did and I request that you return me the \$100.00.

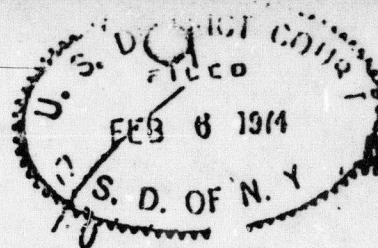
Sworn before me
17 October 1972
Lois K. Kaff
NOTARY PUBLIC
NEW YORK

①

Israel Millsap
Israel Millsap

FILED
U.S. DISTRICT COURT
S.D. OF N.Y.
OCT 17 1 15 PM '72

ISRAEL MILLSAP v. DONALD JOHNSON, et c.



23

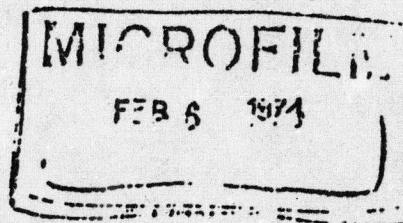
Endorsement
72 Civ. 4418

Defendant moves pursuant to Rule 56, F.R.C.P., for summary judgment. On May 3, 1973, the pro se plaintiff was given permission to file an amended complaint which would contain allegations and jurisdictional basis upon which this Court could act.

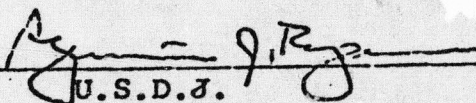
Plaintiff pro se has never submitted or filed an amended complaint and the allegations as stated of the present complaint present no basis for jurisdiction or relief in this Court.

The motion of the United States Attorney to grant summary judgment is granted. The complaint is dismissed on the merits but without costs.

So ordered.

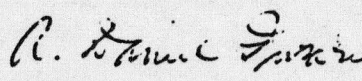


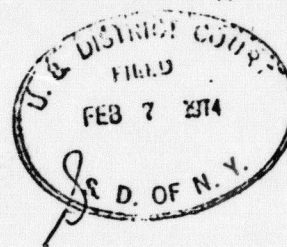
Dated: February 6, 1974.



U.S.D.J.

(A true copy,

{  Clerk



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
ISRAEL MILLSAP,

Plaintiff, :

72 Civil 4418(SJR)

-against-

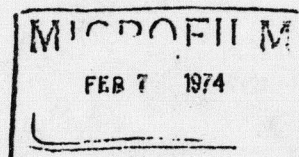
DONALD JOHNSON, ADMINISTRATOR OF
VETERANS AFFAIRS,

Defendant. :

JUDGMENT

----- X
Defendant having moved the Court pursuant to Rule 56, Federal Rules of Civil Procedure for summary judgment, and the said motion having come on to be heard before the Honorable Sylvester J. Ryan, United States District Judge, and the Court thereafter on February 6, 1974, having handed down its memorandum endorsed granting the said motion, and dismissing the complaint on the merits but without costs, it is,

ORDERED, ADJUDGED AND DECREED, that defendant, DONALD JOHNSON, ADMINISTRATOR OF VETERANS AFFAIRS, have summary judgment against the plaintiff, ISRAEL MILLSAP, dismissing the complaint on the merits without costs.



Dated: New York, N. Y.

February 7, 1974

Raymond F. Burghardt
Clerk

(A true copy.)

CLERK

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A 25

-----x
ISRAEL HILLSAP,

Plaintiff,

-v-

DONALD E. JOHNSON, Administrator of
Veterans Affairs,

Defendant.
-----x

REPORT OF
UNITED STATES
MAGISTRATE

72 Civ. 4418 (SJR)

TO THE HONORABLE SYLVESTER J. RYAN, U.S.D.J.:

This report relates to an application by plaintiff, filed in court on May 8, 1975 and referred by you to me for review and recommendation, for an order reopening this case, which was the subject of a judgment rendered by you as of February 7, 1974 granting summary judgment to the Government dismissing the complaint against the named defendant, Donald E. Johnson, Administrator of Veterans Affairs.

Plaintiff's motion, written in longhand and filed May 8, 1975, reads as follows:

"I would like to make motion to reopen case on May 16, 1975 at 9:30 A.M. on the ground that the Veterans Administration sold me this property which had violations and under demolition. The V.A. knew about this. They are no longer standing..." Signed Israel Hillsap, 9537 Prairie Avenue, So., Chicago, Ill. 60628.

The application just quoted is, in effect, a motion under Rule 60(b) of the Federal Rules of Procedure to reopen a final judgment. However, within the application itself, the plaintiff has stated that he filed the application on May 16, 1975 and that he filed the motion to reopen the case on May 16, 1975. The application is dated May 8, 1975 and the motion to reopen is dated May 16, 1975. The application is dated May 8, 1975 and the motion to reopen is dated May 16, 1975. The application is dated May 8, 1975 and the motion to reopen is dated May 16, 1975.

But this is the very issue that your Honor previously disposed of in granting summary judgment in favor of the Government. You were persuaded, on the basis of the record before you, that there had been no overreaching by the Veterans Administration and that the property in question had been sold to the plaintiff strictly on an "as is" basis, with an express disclaimer of any warranties whatsoever.

From my examination of the prior records pertaining to this case, the following facts appear. The Veterans Administration, which of course periodically obtains title to real estate in foreclosure proceedings as successor in interest to the mortgage (by virtue of its guarantees of G.I. Bill of Rights mortgage loans), and which customarily resells property so acquired to private buyers, had the following three transactions with the plaintiff in 1972:

1. Plaintiff purchased property from the V.A. at 665 E. 165 Street, Bronx, for \$3,000 cash;
2. Plaintiff purchased property from the V.A. located at 408 E. 159 Street, Bronx for \$14,500 cash;
3. Plaintiff made a down payment of \$100 respecting V.A. property at 1137 Stubbins Avenue, Bronx, N.Y.

It further appears that plaintiff thereafter learned that the three properties mentioned above (or in one case on which he had placed a deposit) were all subject to violation notices issued by the New York City Department of Buildings. Accordingly, plaintiff brought this action in 1972 against the Veterans Administration, seeking an adjudication that he was entitled to a refund of the money he had paid to the Government and the Government's attorney fees. The court, in its summary judgment, dismissed the plaintiff's claim, based upon the Government's contention that the

property in question had been sold to the plaintiff under a contract stipulating that the property was to be sold "as is", with an express disclaimer of any warranty whatsoever respecting title or condition of the property. In support of its position the Government cited, among other cases, the case of American Elastics v. United States, 187 F.2d 109 2d Cir. 1951, cert. denied.*

The named defendant, Donald E. Johnson, is of course sued solely in his official capacity. Plaintiff, in making his complaints to the Court, specifically and repeatedly refers to the Veterans Administration as an organization, rather than to Donald E. Johnson as an individual. Essentially, this action is an action against the United States Government. Accordingly, the suit is governed by the rule that a sovereign can be sued only with its consent. While the United States Government has, in fact, consented to be sued for breach of contract or breach of warranty (Title 28 U.S.C. §1346(a)), the Government has not consented to be sued for fraud. Moreover, even if it had so consented it is clear from the record that the property in question was sold to the plaintiff pursuant to contracts which contained an express disclaimer clause.

Rule 60(b) F.R.C.P. permits a person to be relieved of a final judgment upon a showing of (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence; (3) fraud; (4) a showing that the judgment is void; (5) a showing that the judgment has been satisfied or it is no longer "executable", that the judgment should have prospective application; or (6) a showing of any other reason justifying relief from the operation of the judgment. Quite clearly, none of the first

five reasons is applicable in this case. The judgment is not void, nor is it no longer executable. There is no showing of mistake, inadvertence, surprise or excusable neglect, or of newly discovered evidence. The only reason left is that the judgment should have prospective application. This is not a proper ground for relief from a final judgment.

Five grounds mentioned in Rule 60(b) apply here; and the so-called "any other reason clause" certainly cannot be the basis for an order vacating the prior judgment merely based upon the assertion that the original judgment was wrongfully granted. Plaintiff could have appealed from the February 7, 1974 judgment and failed to do so. It is wholly inappropriate, therefore, to grant the relief here sought.

It might be added that the time limitation for making a motion under subdivisions (1) ("mistake"), (2) ("newly discovered evidence") or (3) ("fraud") is one year. Accordingly, it would to the extent subdivisions (1) to (3) are relied on by plaintiff, appear that the instant motion is in any event time barred.

For the reasons hereinabove stated, it is recommended that the plaintiff's motion to vacate the judgment heretofore filed on February 7, 1974 dismissing the complaint be denied in all respects.

Copies of this report have been mailed this date to the plaintiff Pro Se and to the United States Attorney, both of whom are instructed that any objections to this report must be filed to your chambers within ten days.

The papers considered by me on this motion are forwarded herewith:

1. Plaintiff's motion, filed 5/3/75, under Rule 60(b) to reopen judgment of 2/7/74;
2. Plaintiff's supporting brief and affidavit dated 5/16/75;
3. Copy of New York City Department of Buildings violation notice dated 4/15/73 as properly located at 165 West 165 Street, furnished to me by plaintiff on 5/16/75 as an exhibit supporting his motion.

At New York, N.Y.
June 2, 1975.

Very respectfully submitted,

J. L. RAY
JAMES L. RAY

cc: MR. ISRAEL HILLSAP
9537 Prairie Avenue, So.
Chicago, Ill. 60628

MR. ISRAEL HILLSAP
350 West 23 Street
New York, N.Y. 10011

V. PAMELA DAVES, ESQ.
Assistant United States Attorney
U.S. Court House
Foley Square
New York, N.Y. 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A 30

-----x
ISRAEL MILLSAP,

Plaintiff,

-v-

DONALD E. JOHNSON, Administrator of
Veterans Affairs,

Defendant.
-----x

REPORT OF
UNITED STATES
MAGISTRATE

72 Civ. 4418 (SJR)

TO THE HONORABLE SYLVESTER J. RYAN, U.S.D.J.:

This report relates to an application by plaintiff, filed in court on May 8, 1975 and referred by you to me for review and recommendation, for an order reopening this case, which was the subject of a judgment rendered by you as of February 7, 1974 granting summary judgment to the Government dismissing the complaint against the named defendant, Donald E. Johnson, Administrator of Veterans Affairs.

Plaintiff's motion, written in longhand and filed May 8, 1975, reads as follows:

"I would like to make motion to reopen case on May 16, 1975 at 9:30 A.M. on the ground that the Veterans Administration sold me this property which had violations and under demolition. The V.A. knew about this. They are no longer standing..." Signed, Israel Millsap, 9537 Prarie Avenue, So., Chicago, Ill. 60628.

The application just quoted is, in effect, a motion under Rule 60(b) of the Federal Rules of Procedure to reopen a final judgment. However, neither the application itself, nor the virtually illegible longhand affidavit in support of the motion thereafter filed with me on May 16, 1975 and forwarded herewith give any reason for the granting of the requested relief other than the claim that the Veterans Administration defrauded the plaintiff.

But this is the very issue that your Honor previously disposed of in granting summary judgment in favor of the Government. You were persuaded, on the basis of the record before you, that there had been no overreaching by the Veterans Administration and that the property in question had been sold to the plaintiff strictly on an "as is" basis, with an express disclaimer of any warranties whatsoever.

From my examination of the prior records pertaining to this case, the following facts appear. The Veterans Administration, which of course periodically obtains title to real estate in foreclosure proceedings as successor in interest to the mortgagee (by virtue of its guarantees of G.I. Bill of Rights mortgage loans), and which customarily resells property so acquired to private buyers, had the following three transactions with the plaintiff in 1972:

1. Plaintiff purchased property from the V.A. at 665 E. 165 Street, Bronx, for \$8,000 cash;
2. Plaintiff purchased property from the V.A. located at 408 E. 159 Street, Bronx for \$14,500 cash;
3. Plaintiff made a down payment of \$100 respecting V.A. property at 1187 Stebbens Avenue, Bronx, N.Y.

It further appears that plaintiff thereafter learned that the buildings which he had purchased (or in one case on which he had placed a deposit) were all subject to violation notices posted by the New York City Department of Buildings. Accordingly, plaintiff brought this action in 1972 against the Veterans Administration, seeking an adjudication that he was entitled to a return of the monies paid aforesaid to the Veterans Administration.

Thereafter, on February 7, 1974, you granted the Government's motion for summary judgment dismissing the complaint. That motion was, of course, based upon the Government's contention that the

property in question had been sold to the plaintiff under a contract stipulating that the property was to be sold "as is", with an express disclaimer of any warranty whatsoever respecting title or condition of the property. In support of its position the Government cited, among other cases, the case of American Elastics v. United States, 187 F.2d 109 2d Cir. 1951, cert. denied.*

The named defendant, Donald E. Johnson, is of course sued solely in his official capacity. Plaintiff, in making his complaints to the Court, specifically and repeatedly refers to the Veterans Administration as an organization, rather than to Donald E. Johnson as an individual. Essentially, this action is an action against the United States Government. Accordingly, the suit is governed by the rule that a sovereign can be sued only with its consent. While the United States Government has, in fact, consented to be sued for breach of contract or breach of warranty (Title 28 U.S.C. §1346(a)), the Government has not consented to be sued for fraud. Moreover, even if it had so consented it is clear from the record that the property in question was sold to the plaintiff pursuant to contracts which contained an express disclaimer clause.

Rule 60(b) F.R.C.P. permits a person to be relieved of a final judgment upon a showing of (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence; (3) fraud; (4) a showing that the judgment is void; (5) a showing that the judgment has been satisfied or it is no longer "equitable", that the judgment should have prospective application; or (6) a showing of "any other reason justifying relief from the operation of the judgment." Quite clearly, none of the first

* The Assistant United States Attorney in charge of this matter has advised me that the Government is content to rest upon the record of its prior motion for summary judgment and does not desire to submit any further papers in opposition to the plaintiff's motion.

five grounds mentioned in Rule 60(b) apply here; and the so-called "any other reason clause" certainly cannot be the basis for an order vacating the prior judgment merely based upon the assertion that the original judgment was wrongfully granted. Plaintiff could have appealed from the February 7, 1974 judgment and failed to do so. It is wholly inappropriate, therefore, to grant the relief here sought.

It might be added that the time limitation for making a motion under subdivisions (1)-("mistake"), (2)("newly discovered evidence") or (3) ("fraud") is one year. Accordingly, it would to the extent subdivisions (1) to (3) are relied on by plaintiff, appear that the instant motion is in any event time barred.

For the reasons hereinabove stated, it is recommended that the plaintiff's motion to vacate the judgment heretofore filed on February 7, 1974 dismissing the complaint be denied in all respects.

Copies of this report have been mailed this date to the plaintiff Pro Se and to the United States Attorney, both of whom are instructed that any objections to this report must be mailed to your chambers within ten days.

The papers considered by me on this motion are forwarded herewith:

1. Plaintiff's motion, filed 5/8/75, under Rule 60(b) to reopen judgment of 2/7/74;
2. Plaintiff's supporting longhand affidavit dated 5/16/75;
3. Copy of New York City Department of Buildings violation notice dated 2/15/73 re property located at 665 West 165 Street, furnished to me by plaintiff on 5/16/75 as an exhibit respecting his motion.

Dated: New York, N.Y.
June 2, 1975.

Respectfully submitted,

Harold J. Raby
HAROLD J. RABY
UNITED STATES MAGISTRATE

cc:

cc: MR. ISRAEL MILLSAP
9537 Prarie Avenue, So.
Chicago, Ill. 60628

A 34

MR. ISRAEL MILLSAP
350 West 23 Street
New York, N.Y. 10011

V. PAMELA DAVIS, ESQ.
Assistant United States Attorney
U.S. Court House
Foley Square
New York, N.Y. 10007

A TRUE COPY
United States Magistrate
for the Southern District of N.Y.

Harold J. Raby

U.S. Stearns Court of ³⁵ Appeals
for the 2d Circuit

MILLSAP

VS

Johnson

8-15-75

I have been Bully Brain
but I am a Credit of Chase
and now Retired and live Ill.
State on May of 1972 I bought
three house from the Veteran
administration in New York City
in Bronx New York when they told
me these house they was under
~~Demolition~~ Demolition the house was
located at 408 E 159 and
665 E 165 and 1167 in Bronx
New York. I close on 665 E 165
and 408 E 159 but I did not
close on 1167 Stearns in Bronx
I serve in World War II the
Government promise to make good
for VA when the war was
over the Reason I did not
close on 1167 Stearns are
because I find it it was
under Demolition

They selfish said you the owner
under Demolition a ~~new~~ new
never have did right in his
life this was a Jew that said
me this property the Government
will say any thing but if you
tried to take something away
from the Government they will
do every thing to put you in
jail so a citizen should have
the same right D. E. Johnson
is the administrator of Veterans
affairs you cannot sue a Govern-
ment employee but D. E. Johnson
is a cabinet officer and he
can be sued the Government
had no right to sell this property
when it was under administration
The city of New York demolished
the Building at 65 5 E 165
street in Bronx New York
They did not notified me
they notified the V.A. administrator
and they did not let me
know why way I found out
about when I talk to Vickroy
in New York at the Veterans
administrator in New York
a Jew is always trying to take
something away from somebody

I never had a day in Court. ^{A. 37}
 The U.S. attorney never notified
 me when the trial came up.
 The U.S. attorney is Raist and King
 and I made with V. Janelle Davis
 who I am talking about.
 I am asking the Court not
 not affirmed. I ask the Court
 to return my money or send
 it back to the U.S. District Court
 for trial. I did not have
 a day in Court. This is just
 in my Court on this is my
 body. God. This I am did
 to me what the Jews are
 trying to do the Arab Egypt
 in see for East. So I ask again
 not of to affirmed to return
 my money or return it
 to the Lower Court for trial.

[Signature]
 Notary Public

Israel Mellaf
 1109 W. 102 St.
 Chicago Ill
 312 239 6575
 212 247 2416

A Cap^{ist} U.S. attorney V. Janelle Davis
 St Andrew Place
 New York New York

deposes and says that he is employed in the office of

United States Attorney for

the Southern District of New York, attorney for the

Form 280 A-Affidavit of Service by Mail
Rev. 12/75

AFFIDAVIT OF MAILING

State of New York)
County of New York) ss

Marian J. Bryant being duly sworn,
deposes and says that he is employed in the Office of the
United States Attorney for the Southern District of New York.

That on

January day of 76 s, 19 he served a copy of the
Government's Notice of Motion and Memo of Law

by placing the same in a properly postpaid franked envelope
addressed: Isreal Millsap
9537 Prarie Avenue
Chicago, Illinois 60628

And deponent further
says he sealed the said envelope and placed the same in the
mail chute drop for mailing in the United States Courthouse Annex,
One St. Andrews Plaza, Borough of Manhattan, City of New York.

Sworn to before me this

14th day of January 76, 19

LAWRENCE MASON
Notary Public, State of New York
No. 03-25-286
Qualified in Bronx County
Commission Expires March 30, 1977

You will please take notice that a _____
which the within is a copy, was this day
uly entered in the within entitled action,
the office of the Clerk of this Court.

Dated, N. Y., _____, 19____

Yours, etc.,

United States Attorney
Attorney for _____

To

Attorney for _____

Sir:

Please take notice that the within _____
will be presented for settlement and sig-
nature of the Honorable _____
United States District Judge, at the office of
the Clerk, Room 601, United States Court-
house, Foley Square, Borough of Manhat-
tan, City of New York, on the _____ day of
_____, 19____, at 10:30 o'clock in the
_____ noon or as soon thereafter as coun-
sel can be heard.

Dated, N. Y., _____, 19____

Yours, etc.,

United States Attorney
Attorney for _____

To

Attorney for _____

United States District Court

SOUTHERN DISTRICT OF NEW YORK

ISREAL MILLSAP,

Plaintiff,

-v-

D.E. JOHNSON or his successor,
VETERANS ADMINISTRATION,

Defendants.

AFFIDAVIT AND NOTICE OF MOTION
75 CIV. 5160 (LMP)

THOMAS J. CAWILL

TEL. 264-2311

United States Attorney
Attorney for _____

721-1667

Due service of a copy of the within is here-
by admitted.

New York, _____, 19____

Attorney for

To

Attorney for

U. S. DISTRICT COURT
FILED 1-14-76
S.D. OF NEW YORK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ISREAL MILLSAP,

Plaintiff,

75 Civ. 5160 LWP)

D. E. JOHNSON or his successor,
VETERANS ADMINISTRATION,

Defendants.

MEMORANDUM OF LAW

THOMAS J. CAHILL
United States Attorney for the
Southern District of New York
Attorney for the Defendants.

V. PAMELA DAVIS
Assistant United States Attorney
-Of Counsel-

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ISREAL MILLSAP,

Plaintiff,

75 Civ. 5160 (LWP)

-v-

D. E. JOHNSON or his successor,
VETERANS ADMINISTRATION,

Defendants.
-----X

MEMORANDUM OF LAW

This memorandum is submitted in support of
defendants' motion to dismiss the complaint pursuant
to Rule 12(b) of the Federal Rules of Civil Procedure.

STATEMENT OF FACTS

The following statement of facts is taken
from the complaint in Millsap v. Johnson, 72 Civ.
4418 (SJR) attached as Exhibit A to the affidavit of
V. Pamela Davis.

Isreal Millsap contracted to purchase three
buildings from the Veterans Administration located at:

665 E. 165th Street, Bronx
408 E. 159th Street, Bronx
1187 Stebbins Avenue, Bronx

VPD:if
75-3447

The sale was closed on the first two buildings but not on the Stebbins Avenue property. The buildings were in poor condition.

By summons and complaint, attached as Exhibit A to the affidavit of V. Pamela Davis, served on the defendants on October 26, 1972, Millsap brought an action naming Donald E. Johnson, Administrator of Veterans affairs, as defendant.

The complaint contained neither jurisdictional allegations nor references to a cause of action; it sought no specific relief. It did, however, clearly indicate dissatisfaction with the three real estate transactions.

The defendant moved for summary judgment relying on the three contracts which clearly demonstrated that the buildings were sold "as is" with no warranties whatsoever. This motion was granted by Judge Ryan in an endorsed opinion dated February 7, 1975. This opinion, which states that judgment was granted "on the merits," is attached as Exhibit B to the affidavit of V. Pamela Davis, the judgment is attached as Exhibit C.

Over a year later, on May 8, 1975, plaintiff Millsap filed what he styled a "motion to reopen case" based upon the demolition by New York City of the premises at 665 E. 165th Street, Bronx. Judge Ryan referred the matter to Magistrate Harold J. Raby whose report is attached as Exhibit D to the complaint of V. Pamela Davis. Judge Ryan denied the motion on June 24, 1975.

On July 15, 1975, plaintiff filed a notice of appeal from "the decision of Judge Ryan dated February 1974." On September 11, 1975, the Government moved to dismiss the appeal as untimely. Shortly thereafter, plaintiff commenced the instant action in Supreme Court for the State of New York, County of New York. The complaint was served on September 30, 1975.

By order dated October 9, 1975, the Second Circuit granted the dismissal of the appeal from the final judgment of February, 1974 but stated:

" Since this is a pro se matter, we construe the appeal to also have been taken from the order of June 24, 1975 [denying the motion to reopen], and the motion to dismiss the appeal from this order is denied.

The appeal from the denial of the motion to reopen the original lawsuit is pending.

By Petition for Removal filed in the United States District Court, Southern District of New York on October 20, 1975, and Notice of Removal filed in Supreme Court for the State of New York, County of New York on October 21, 1975, the state court action was removed to the United States District Court. The Government answered the complaint on November 6, 1975, entering a general denial and asserting a number of affirmative defenses among which was res judicata.

While the handwritten complaint herein refers to property at "655 E. 75 Street", with no reference to a borough, it is obvious from all of the other papers filed by plaintiff Millsap that he is referring to 655 E. 165th Street in the Bronx. No mention has ever been made of a property in any borough at 655 E. 75th Street, nor does the Veterans Administration have any record of any transaction concerning that address in any borough. On the other hand, the Veterans Administration did sell plaintiff Millsap a property at 665 E. 165th Street in the Bronx, this property being one of the three which were the subject of the original

VPD:ilf
75-3447

action. See, for example, plaintiff Millsap's submission to the Second Circuit filed with his notice of appeal on August 15, 1973. (Exhibit E to affidavit of V. Pamela Davis.) On page one he refers to 655 E. 165 in the Bronx.

POINT I

THE GRANTING OF SUMMARY JUDGMENT
TO DEFENDANT HEREIN IN A PREVIOUS
ACTION BETWEEN THESE SAME PARTIES
ON THE SAME ISSUES OPERATES AS
RES JUDICATA TO BAR THIS ACTION
BY THE PLAINTIFF

Plaintiff Millsap commenced an action in
6c
October of 1972 which placed in issue the transactions between himself and the Veterans Administration as to three pieces of property. These issues were resolved against him by Judge Ryan in a decision on the merits dated February 7, 1974. Plaintiff did not appeal that decision but did move to reopen the action which motion was denied on June 24, 1975. Plaintiff's appeal from that denial is presently pending in the Second Circuit.

Plaintiff, apparently believing that he has lost in the Federal arena, now seeks to start all over

again via the State courts. He has sued the same party--the Veterans Administration--on the same issues, the sale to him of property. This is precisely the situation which the doctrine of res judicata was designed to prevent.

The granting of a motion for summary judgment is res judicata as to the issues before the court, and the parties are estopped from commencing a new action on such issues. Stokke v. Southern Pacific Co., 169 F.2d 42 (10th Cir. 1948); Curacao Trading Co. v. Federal Ins. Co., 3 F.R.D. 203 (S.D.N.Y. 1942), aff'd, 137 F.2d 911 (2d Cir. 1943).

Plaintiff may yet prevail upon appeal. Whether he does or not, however, the resolution of the original action is the exclusive means of resolving the issues in the instant action between the plaintiff and defendants herein. Plaintiff's complaint should be dismissed.

CONCLUSION

For the foregoing reasons, the defendants' motion to dismiss the complaint should be granted.

Respectfully submitted,

THOMAS J. CAHILL
United States Attorney for the
Southern District of New York
Attorney for Defendants.

V. PAMELA DAVIS
Assistant United States Attorney
-Of Counsel-

Miss DAVIS

A 48

United States District Court
Southern District
of New York

1-20-76

ISAEL MILLER
Plaintiff

73C. 5160

DE Johann
Director of
Veteran Affairs
on his Successor
Veteran Administrator

I have been duly sworn and
I am a Resident of Chicago
I am Isael Miller Jr. ss.

This action was originally
filed the State Supreme
Court of New York against DE Johann
and the Veteran Administrator
and the City of New York
for the destruction of
a Building at 655 E 165

This case was originally
72C 4418 now before the
2nd Circuit the Veteran
Administrator and the City
of New York. I pray my Building
at 655 East 165 only
told me about it I filed a
Motion to Dismiss.

in this matter 75 C 5160
 The US attorney needs
 what what one between the
 City of New York and the Helman
 administration. This is a different
 one the US attorney needs one
 The matter she wanted to
 Run the Court like she wanted
 it near ~~the Court~~ the
 can do that so if there are
 judgment by defect for the
 US attorney that one.

Donald Miller
 9537 Prairie
 Chicago Ill 60632

At Capital US attorney
 St Andrew place
 New York New York

State of New York
 County of New York

On This 26 Day of

JANUARY 1976

Myron Spence

THOMAS BRINGS
 Notary Public, State of New York
 No. 41-270003
 Can. In. in Queens County
 Commission Expires March 20, 1977

IN RE: WILLIAM C. BROWN, JR., Plaintiff, vs. VETERANS ADMINISTRATION, Defendant.

COMPLAINT

1. The undersigned, William C. Brown, Jr., do hereby certify that the facts herein stated are true and correct to the best of my knowledge and belief, and that the facts herein stated are true and correct to the best of my knowledge and belief, and that the facts herein stated are true and correct to the best of my knowledge and belief.

2. The undersigned, William C. Brown, Jr., do hereby certify that the facts herein stated are true and correct to the best of my knowledge and belief, and that the facts herein stated are true and correct to the best of my knowledge and belief, and that the facts herein stated are true and correct to the best of my knowledge and belief.

3. The undersigned, William C. Brown, Jr., do hereby certify that the facts herein stated are true and correct to the best of my knowledge and belief, and that the facts herein stated are true and correct to the best of my knowledge and belief, and that the facts herein stated are true and correct to the best of my knowledge and belief.

4. The undersigned, William C. Brown, Jr., do hereby certify that the facts herein stated are true and correct to the best of my knowledge and belief, and that the facts herein stated are true and correct to the best of my knowledge and belief, and that the facts herein stated are true and correct to the best of my knowledge and belief.

5. The undersigned, William C. Brown, Jr., do hereby certify that the facts herein stated are true and correct to the best of my knowledge and belief, and that the facts herein stated are true and correct to the best of my knowledge and belief, and that the facts herein stated are true and correct to the best of my knowledge and belief.

6. The undersigned, William C. Brown, Jr., do hereby certify that the facts herein stated are true and correct to the best of my knowledge and belief, and that the facts herein stated are true and correct to the best of my knowledge and belief, and that the facts herein stated are true and correct to the best of my knowledge and belief.

7. The undersigned, William C. Brown, Jr., do hereby certify that the facts herein stated are true and correct to the best of my knowledge and belief, and that the facts herein stated are true and correct to the best of my knowledge and belief, and that the facts herein stated are true and correct to the best of my knowledge and belief.

that Judge Ryan believed the motion to Reopen the Baby, who in a Report dated June 2, 1975, recommended that the motion to reopen be denied because plaintiff has not demonstrated that any of the provisions of Rule 60(b) were applicable and because the motion was in any event time barred under Rule 60(b). In a brief order dated June 2, 1975, Judge Ryan adopted the Report of the Magistrate and denied the motion to vacate the previous judgment. Plaintiff has taken an appeal from that order to the Court of Appeals for the Second Circuit which appeal is still pending.

On September 30, 1975, on the above, plaintiff commenced a pro se action in state court against the City of New York, D.E. Robinson and the Veterans Administration. That dispute was removed to this Court by petition of removal filed October 20, 1975.

In the complaint in this action, Plaintiff seeks damages in amounts different from those demanded in 72 Civ. 4418 and alleges the demolition of the bunks. Plaintiff also charges that the Veterans Administration knew of the pending demolition at the time of the sale. In short, the complaint alleges the operative facts which were contained in plaintiff's affidavit in support of his motion to remove the case to 72 Civ. 4418. However, this action named the City of New York as an additional party defendant.

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2-17-76

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ISREAL MILLSAP,

Plaintiff,

-v-

D. E. JOHNSON or his
successor, Veterans Adminis-
tration

:
:
:
ANSWER

75 Civ. 5160 (LMP)

-----X
Defendants, by their attorney Thomas J. Cahill,
United States Attorney for the Southern District of New
York, for their answer to the complaint herein:

1. Denies the allegations of the complaint
insofar as they are made against defendant D. E. Johnson
and the Veterans Administration.

2. Denies knowledge or information sufficient
to form a belief as to the allegations of the complaint
against New York City.

FIRST AFFIRMATIVE DEFENSE

3. This Court lacks jurisdiction of the
subject matter of this complaint.

SECOND AFFIRMATIVE DEFENSE

4. Plaintiff has failed to state a claim
pursuant to which relief can be granted.

WHEREFORE, defendants D. E. Johnson and Veterans
Administration request judgment dismissing the complaint
together with costs and such other relief as is just.

Dated: New York, New York
February 18, 1976

THOMAS J. CAHILL
United States Attorney for the
Southern District of New York
Attorney for Defendants
D. E. Johnson and
Veterans Administration

By: V. PAMELA DAVIS
V. PAMELA DAVIS
Assistant United States Attorney

VPD:11f
75-3447

S-A-55e

One St. Andrew's Plaza
New York, New York 10007
Room 537
Tel: (212) 791-1967

TO: ISREAL MILLSAP
9537 Prarie Avenue
Chicago, Illinois 60628

the Southern District of New York, attorney for the
herein.

That on the _____ day of _____, 19____, he did serve a true copy of the hereto annexed _____

Form 280 A-Affidavit of Service by Mail
Rev. 12/75

AFFIDAVIT OF MAILING

State of New York)
County of New York) ss

MANUEL BERMUDEZ being duly sworn,
deposes and says that he is employed in the Office of the
United States Attorney for the Southern District of New York.

That on the

19th day of Feb, 1976 he served a copy of the
within Goyt's Answer to Complaint.

by placing the same in a properly postpaid franked envelope addressed:

one party listed annexed Form.

And deponent further says he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Courthouse Annex, One St. Andrews Plaza, Borough of Manhattan, City of New York.

Sworn to before me this

19th day of Feb, 1976

RALPH L. LEE
Notary Public, State of New York
No. 41-229238 Queens County
Term Expires March 30, 1977

Ms. P. Davis
75-3447

February 25, 1976

U. D. N. :

of Vb

UNITED STATES DISTRICT COURT
FOR SOUTHERN DISTRICT OF NEW YORK

MILLSAP
VS
JOHNSON

75C5160

I have been dilly sworn, that i am a resident of Chicago, Ill
Now Retired.

I received her so called answer dated at New York on Feb.
18, 1976.

I am asking V. Pamela Davis of the U.S. Attorney Office of
the Southern District New York N. Y. product M. Vagher and V
Vickroy Loan Guarantee office Veterans Administration a. 252
7 Ave. New York. N. Y. and Vickroy.

These fellow are asst. to D. E. Johnson for Deposition at 3:15
P.M on May 19, 1976 and take then before a Notary Public at
350 West 23 Street New York N. Y. V. Pamela Davis Asst. U.S.
Attorney no that these people no all about the case.

Ernesto Krey

9537 print
Chicago Ill. 60628

MY COMMISSION EXPIRES MARCH 28, 1978 MR. MILLSAP

P.S. Copy is being send to Atty V. Pamela Davis
This is date in Chicago, Illinois Feb 25, 1976

MAR 1 1976
UNITED STATES ATTORNEY
SO. DIST. N. Y.

75-3447

A 30
United States District Court
Southern District

MILLSA P
PLAINTIFF
VS
D E JOHNSON
VETERAN
ADMINISTRATOR

DEFENDANT

7525160

Miss Davis

W 75
HON. L. PEIRCE please take notice
at 10:00 AM on April 20, 1976 I will
appear before you for a matter of
Dissemination of this matter this is
second notice I have served on
the U.S. attorney ~~Shen~~ New arr.
C

Israel Milsey
9537 Prairie
Chicago Ill

VFD:mlb
M-1839UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKU.S. DISTRICT COURT
FILED 7-7-76
S.D. of NEW YORK

ISRAEL MILLSAP,

Plaintiff,

- v -

CITY OF NEW YORK, DONALD E.
JOHNSON, et al.,

Defendants.

NOTICE OF MOTION

75 Civ. 5160 (CSH)

PLEASE TAKE NOTICE, that upon the annexed af-

fidavit of V. Pamela Davis, the undersigned will move this Court, before the Honorable Charles Haight at the United States Courthouse, Foley Square, New York, New York, on Friday, the 23rd day of July, at 10:00 A.M. for dismissal of the complaint herein pursuant to rule 12(b)(1) and (6) of the Federal Rules of Civil Procedure or, in the alternative, for a protective order pursuant to Rule 26(c) vacating a notice of deposition, for a stay of the deposition pending the disposition of this motion and for such other relief as is just.

Dated: New York, New York

July 6, 1976

Yours, etc.

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for Federal Defendants.

By:

V. PAMELA DAVIS
V. PAMELA DAVIS
Assistant United States Attorney
Office and Post Office Address:
One St. Andrew's Plaza
New York, New York 10007
Telephone: (212) 791-1967

TO:

MR. ISRAEL MILLSAP
9537 Prairie Avenue
Chicago, Illinois 60628

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
ISRAEL MILLSAP,

Plaintiff,

- v -

CITY OF NEW YORK, DONALD E.
JOHNSON, et al.,

Defendants.
----- x

STATE OF NEW YORK)
COUNTY OF NEW YORK :
SOUTHERN DISTRICT OF NEW YORK)

:
: AFFIDAVIT
: 75 Civ. 5160 (CSH)

: ss.:
)

V. PAMELA DAVIS, being duly sworn deposes and
says:

1. I am an Assistant United States Attorney in the office of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, and as such, am in charge of the defense of this action as well as all other pending litigation between Mr. Millsap, plaintiff herein, and the Veterans Administration.

2. I make this affidavit in support of the annexed motion to dismiss the complaint or, in the alternative, for a protective order vacating a notice of deposition served herein.

3. This is the sixth action which Mr. Millsap has brought against the Veterans Administration and the second involving the building at 655 E. 165th Street in the Bronx (misstated as 655 E. 75th Street in his complaint).

4. The first action on this building was commenced in 1972. The complaint, attached as Exhibit A hereto, alleges the purchase from the Veterans Administration of two buildings, including 655 East 165th Street, and a contract to purchase a third.

5. The complaint alleges that there were "liens and violations all over the building" at 655 East 165th Street and sought redress.

6. The Veterans Administration answered that the buildings had been sold at very low prices on an explicitly "as is" basis. A copy of the contract of sale is attached as Exhibit B.

7. In connection with this action, I voluntarily provided Mr. Millsap with a copy of the complete file on this building and Mr. Millsap's purchase thereof at the Veterans Administration.

8. By endorsed opinion filed February 6, 1974, the Honorable Sylvester Ryan granted summary judgment to the Veterans Administration. Mr. Millsap did not appeal.

9. Over a year later, on May 8, 1975, Mr. Millsap moved to reopen this action alleging the demolition of the building.

10. Judge Ryan, following a report on the matter by Magistrate Raby, denied this motion on June 24, 1975. Mr. Millsap appealed this determination.

11. Mr. Millsap's brief in the Second Circuit, attached as Exhibit C, is concerned with the demolition of the buildings and states that he knew that one of the properties was under ^{demolition} at the time he contracted to purchase it.

12. The brief also states that his problems arose because "these was Jews that sold me the property" and "a Jew is alway trying to take something away from somebody".

13. Judge Ryan's denial of Mr. Millsap's motion to reopen his action was affirmed on April 16, 1976. The affirmance, together with Mr. Millsap's second submission to the Second Circuit, is attached as Exhibit D.

14. Mr. Millsap then moved for reconsideration which the Second Circuit denied on April 30, 1976.

15. While Mr. Millsap's appeal was pending, he commenced this action in State Supreme Court, alleging the demolition of the 165th Street property. I removed this action to this Court on October 20, 1975 whereupon it was assigned to the Honorable Lawrence Pierce.

16. I moved on January 14, 1976 to dismiss this action as barred by the res judicata effect of the action before Judge Ryan. This motion was denied by endorsed order dated February 9, 1976 which order is attached as Exhibit E.

17. Judge Pierce then reassigned this action to the Honorable Charles Haight.

18. On February 25, 1976, Mr. Millsap noticed the deposition of "Mr. Vagher" and "Mr. Vickroy". The latter name was repeated in the notice as "Vichroy".

19. I spoke with a Mr. Vickroy and a Mr. Vaughn at the Veterans Administration. They both recalled an angry appearance which Mr. Millsap made at the Veterans Administration in the Fall of 1975 but stated they had neither responsibility for nor personal knowledge of any transaction between the Veterans Administration and Mr. Millsap.

mkbb
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20. At my request, Mr. Vickroy searched the files for any information with regard to the demolition. Copies of two letters were found:

(a) From the Borough President of the Bronx to the Veterans Administration dated August 28, 1973 stating that the building at 165th Street would be demolished after notification to Mr. Millsap, and

(b) From P. J. Kelly of the Veterans Administration to Mr. Millsap dated September 4, 1973 enclosing the first letter.

21. I provided Mr. Millsap with copies of both letters.

22. At a pre-trial conference before Judge Haight, the deposition was deemed adjourned to August 19, 1976.

23. Mr. Millsap has been in default on his mortgage payments on the 165th Street property since August 1, 1972. This office has been requested to commence foreclosure proceedings. He made only one payment on the mortgage of \$142.00 prior to defaulting entirely.

24. In the three and a half years that I have been litigating with Mr. Millsap he has been consistently abusive, obscene and threatening.

WHEREFORE, defendants request that the attached motion to dismiss the complaint or, in the alternative, to vacate the notice of deposition be granted.

V. PAMELA DAVIS
V. PAMELA DAVIS
Assistant United States Attorney

Sworn to before me this
day of July, 1976.

Notary Public

RALPH L. LEE
Notary Public, State of New York
No. 4177623 - Queens County
Term Expires March 30, 1977

Southern District Court of New York

Israel Millsap, 350 West 23rd Street, New York ^{OK 5-777}

VS

Donald E. Johnson, Veterans Administration, Washington, D.C. 20420,
Administrator of Veterans Affairs.

1. On May 5th, 1972 I purchased a piece of property at 665 East 165 Street, Bronx, New York. I never saw this property until I bought it and my man did not report to me until July 1972. There are liens and violations all over the building and it is not fit for human beings to live in and I cannot get it fixed up. I am unable to get a loan on the building. Please instruct Arby A. Halpern to fix up this building and remove all liens and give me another building that is suitable for me to rent to people to live.

2. On May 5, 1972, I purchased a piece of property at 408 East 159th Street, Bronx, New York. This building is also in deplorable condition. The water is cut off from the street and they refuse to remove all liens and violation and they also said that I no longer own this property. Please instruct Arby A. Halpern and Silverman of the Loan Guarantee Department not to forbid me to go into this property until the Court has made a final decision and I therefore ask judgment for \$50,000.

3. I went to contract on 1167 Stebens Avenue, Bronx, New York. Arby A. Halpern instructed Hawley & Hawley, real estate agent to give him \$100.00. He promised to fixed the building up which he never did and I request that you return me the \$100.00.

Sworn before me
NOV 17 1972
[Signature]

Israel Millsap
Israel Millsap

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535

TO : DIRECTOR, FBI (100-388610) FROM : SAC, NEW YORK (100-11420) (P)
SUBJECT: [REDACTED] (NY 100-11420)
RE: [REDACTED] (NY 100-11420)

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]

10/1/80 100-40-0182 3442002

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]

For this purpose we have been able to identify the following subgroups of the group of all transformations of the plane which leave the origin fixed:

$\{T_1\}$	$\{T_2\}$	$\{T_3\}$	$\{T_4\}$	$\{T_5\}$	$\{T_6\}$	$\{T_7\}$	$\{T_8\}$	$\{T_9\}$	$\{T_{10}\}$	$\{T_{11}\}$	$\{T_{12}\}$	$\{T_{13}\}$	$\{T_{14}\}$	$\{T_{15}\}$	$\{T_{16}\}$	$\{T_{17}\}$	$\{T_{18}\}$	$\{T_{19}\}$	$\{T_{20}\}$	$\{T_{21}\}$	$\{T_{22}\}$	$\{T_{23}\}$	$\{T_{24}\}$	$\{T_{25}\}$	$\{T_{26}\}$	$\{T_{27}\}$	$\{T_{28}\}$	$\{T_{29}\}$	$\{T_{30}\}$	$\{T_{31}\}$	$\{T_{32}\}$	$\{T_{33}\}$	$\{T_{34}\}$	$\{T_{35}\}$	$\{T_{36}\}$	$\{T_{37}\}$	$\{T_{38}\}$	$\{T_{39}\}$	$\{T_{40}\}$	$\{T_{41}\}$	$\{T_{42}\}$	$\{T_{43}\}$	$\{T_{44}\}$	$\{T_{45}\}$	$\{T_{46}\}$	$\{T_{47}\}$	$\{T_{48}\}$	$\{T_{49}\}$	$\{T_{50}\}$	$\{T_{51}\}$	$\{T_{52}\}$	$\{T_{53}\}$	$\{T_{54}\}$	$\{T_{55}\}$	$\{T_{56}\}$	$\{T_{57}\}$	$\{T_{58}\}$	$\{T_{59}\}$	$\{T_{60}\}$	$\{T_{61}\}$	$\{T_{62}\}$	$\{T_{63}\}$	$\{T_{64}\}$	$\{T_{65}\}$	$\{T_{66}\}$	$\{T_{67}\}$	$\{T_{68}\}$	$\{T_{69}\}$	$\{T_{70}\}$	$\{T_{71}\}$	$\{T_{72}\}$	$\{T_{73}\}$	$\{T_{74}\}$	$\{T_{75}\}$	$\{T_{76}\}$	$\{T_{77}\}$	$\{T_{78}\}$	$\{T_{79}\}$	$\{T_{80}\}$	$\{T_{81}\}$	$\{T_{82}\}$	$\{T_{83}\}$	$\{T_{84}\}$	$\{T_{85}\}$	$\{T_{86}\}$	$\{T_{87}\}$	$\{T_{88}\}$	$\{T_{89}\}$	$\{T_{90}\}$	$\{T_{91}\}$	$\{T_{92}\}$	$\{T_{93}\}$	$\{T_{94}\}$	$\{T_{95}\}$	$\{T_{96}\}$	$\{T_{97}\}$	$\{T_{98}\}$	$\{T_{99}\}$	$\{T_{100}\}$	$\{T_{101}\}$	$\{T_{102}\}$	$\{T_{103}\}$	$\{T_{104}\}$	$\{T_{105}\}$	$\{T_{106}\}$	$\{T_{107}\}$	$\{T_{108}\}$	$\{T_{109}\}$	$\{T_{110}\}$	$\{T_{111}\}$	$\{T_{112}\}$	$\{T_{113}\}$	$\{T_{114}\}$	$\{T_{115}\}$	$\{T_{116}\}$	$\{T_{117}\}$	$\{T_{118}\}$	$\{T_{119}\}$	$\{T_{120}\}$	$\{T_{121}\}$	$\{T_{122}\}$	$\{T_{123}\}$	$\{T_{124}\}$	$\{T_{125}\}$	$\{T_{126}\}$	$\{T_{127}\}$	$\{T_{128}\}$	$\{T_{129}\}$	$\{T_{130}\}$	$\{T_{131}\}$	$\{T_{132}\}$	$\{T_{133}\}$	$\{T_{134}\}$	$\{T_{135}\}$	$\{T_{136}\}$	$\{T_{137}\}$	$\{T_{138}\}$	$\{T_{139}\}$	$\{T_{140}\}$	$\{T_{141}\}$	$\{T_{142}\}$	$\{T_{143}\}$	$\{T_{144}\}$	$\{T_{145}\}$	$\{T_{146}\}$	$\{T_{147}\}$	$\{T_{148}\}$	$\{T_{149}\}$	$\{T_{150}\}$	$\{T_{151}\}$	$\{T_{152}\}$	$\{T_{153}\}$	$\{T_{154}\}$	$\{T_{155}\}$	$\{T_{156}\}$	$\{T_{157}\}$	$\{T_{158}\}$	$\{T_{159}\}$	$\{T_{160}\}$	$\{T_{161}\}$	$\{T_{162}\}$	$\{T_{163}\}$	$\{T_{164}\}$	$\{T_{165}\}$	$\{T_{166}\}$	$\{T_{167}\}$	$\{T_{168}\}$	$\{T_{169}\}$	$\{T_{170}\}$	$\{T_{171}\}$	$\{T_{172}\}$	$\{T_{173}\}$	$\{T_{174}\}$	$\{T_{175}\}$	$\{T_{176}\}$	$\{T_{177}\}$	$\{T_{178}\}$	$\{T_{179}\}$	$\{T_{180}\}$	$\{T_{181}\}$	$\{T_{182}\}$	$\{T_{183}\}$	$\{T_{184}\}$	$\{T_{185}\}$	$\{T_{186}\}$	$\{T_{187}\}$	$\{T_{188}\}$	$\{T_{189}\}$	$\{T_{190}\}$	$\{T_{191}\}$	$\{T_{192}\}$	$\{T_{193}\}$	$\{T_{194}\}$	$\{T_{195}\}$	$\{T_{196}\}$	$\{T_{197}\}$	$\{T_{198}\}$	$\{T_{199}\}$	$\{T_{200}\}$	$\{T_{201}\}$	$\{T_{202}\}$	$\{T_{203}\}$	$\{T_{204}\}$	$\{T_{205}\}$	$\{T_{206}\}$	$\{T_{207}\}$	$\{T_{208}\}$	$\{T_{209}\}$	$\{T_{210}\}$	$\{T_{211}\}$	$\{T_{212}\}$	$\{T_{213}\}$	$\{T_{214}\}$	$\{T_{215}\}$	$\{T_{216}\}$	$\{T_{217}\}$	$\{T_{218}\}$	$\{T_{219}\}$	$\{T_{220}\}$	$\{T_{221}\}$	$\{T_{222}\}$	$\{T_{223}\}$	$\{T_{224}\}$	$\{T_{225}\}$	$\{T_{226}\}$	$\{T_{227}\}$	$\{T_{228}\}$	$\{T_{229}\}$	$\{T_{230}\}$	$\{T_{231}\}$	$\{T_{232}\}$	$\{T_{233}\}$	$\{T_{234}\}$	$\{T_{235}\}$	$\{T_{236}\}$	$\{T_{237}\}$	$\{T_{238}\}$	$\{T_{239}\}$	$\{T_{240}\}$	$\{T_{241}\}$	$\{T_{242}\}$	$\{T_{243}\}$	$\{T_{244}\}$	$\{T_{245}\}$	$\{T_{246}\}$	$\{T_{247}\}$	$\{T_{248}\}$	$\{T_{249}\}$	$\{T_{250}\}$	$\{T_{251}\}$	$\{T_{252}\}$	$\{T_{253}\}$	$\{T_{254}\}$	$\{T_{255}\}$	$\{T_{256}\}$	$\{T_{257}\}$	$\{T_{258}\}$	$\{T_{259}\}$	$\{T_{260}\}$	$\{$
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VETERANS ADMINISTRATION
CREDIT STATEMENT OF PROSPECTIVE PURCHASER AND CONTRACT OF SALE
LOAN GUARANTY DIVISION

AD 18
m 461133

INSTRUCTIONS TO BROKERSS - Prepare in quadruplicate. Send original plus two copies and all attachments to VA Regional Office handling property. Give one copy to purchaser, retain one copy for your file.

655 E. 165th St., Bx., NY 10456

SECTION I - PURCHASER'S CREDIT STATEMENT

1. NAME AND ADDRESS OF PURCHASER (in person in which title is to be taken) Israel W. Millsap 121-06 153rd Street Jamaica, New York 11420		2. RACE OR ETHNIC ORIGIN OF PURCHASER (Check one) ☐ WHITE (Non-minority) ☐ ORIENTAL ☐ AMERICAN INDIAN ☐ SPANISH AMERICAN ☐ NEGRO/BLACK ☐ OTHER	
3. MARITAL STATUS (Check one) ☐ SINGLE ☐ NEVER MARRIED ☐ WIDOWED ☐ DIVORCED ☐ SEPARATE		4. IF MARRIED, NAME OF SPOUSE	
5. DEPENDENTS OTHER THAN SPOUSE	6. YEAR OF BIRTH OF PURCHASER 10/7/20	7A. SOCIAL SECURITY NUMBER 427-40-0182	7B. SERVICE SERIAL NUMBER 34429002
AGE	RELATIONSHIP	AGE	RELATIONSHIP
	None		None
8. IS PURCHASER A VETERAN OF WORLD WAR II, THE KOREAN CONFLICT OR OF ACTIVE MILITARY SERVICE PERFORMED AFTER JANUARY 3, 1955? ☒ YES ☐ NO		9. STATE OF HEALTH OF PURCHASER Good	

10. EMPLOYMENT RECORD OF PURCHASER (Last five years.)

NAME AND ADDRESS OF EMPLOYER	TITLE OF POSITION	DATE FROM	DATE TO	ANNUAL INCOME
Israel W. Millsap 121-06 153 St., Ja., NY 11420	owner-realty	1965	1972	\$ 12,000
Israel W. Millsap 121-06 153 St., Ja., N.Y. 11420	owner-cosmetics	1945	1972	\$ 6,000
			total	\$ 18,000

11. EMPLOYMENT RECORD OF SPOUSE (Last five years.)

NAME AND ADDRESS OF EMPLOYER	TITLE OF POSITION	DATE FROM	DATE TO	ANNUAL INCOME
	none			\$
				\$
				\$

12. BUSINESS REFERENCES (Give two)

NAME AND ADDRESS OF BUSINESS REFERENCE	DATE FROM	DATE TO	ANNUAL INCOME
Inter Island Mtge Corp. 476-60 Union T'pike, Flushing NY 11366			
GECCorp P.O. Box 49 Stanford, Conn. 06069			

14. NAME AND ADDRESS OF PRESENT LANDLORD OR AGENT

Inter Island Mtge. Corp.
176-60 Union T'pike, Flushing, NY 11366

13. BANK ACCOUNTS

First Fed Sav. & Ln Ass. of Chicago
Chicago, Ill. 60690 sav acct.
Bankers Trust-Patchogue, NY 11772
Acct # 043 186 9 checking

17A. LOCATION AND TYPE OF REAL ESTATE OWNED

121-06 153 St. Ja, NY 11420

17B. VALUE OF PROPERTY

38,000

17C. NAME AND ADDRESS OF MORTGAGEE

Inter Isld Mtge Corp Adrs above
Dale Funding Corp.

639 Hoffman Ave, Bellport, NY 11713-22,000

0520 Savoy B'klyn, NY 11216 \$7,000

17E. REQUIRED MONTHLY PAYMENTS

\$ 313-

17F. ARE THERE ANY ARREARS OF PRINCIPAL, INTEREST, OR TAXES ON THIS PROPERTY?

☐ YES ☒ NO

18A. AMOUNT OF CASH ON HAND AND ON DEPOSIT

\$ 2000-

18B. CASH VALUE OF U.S. SAVINGS BONDS, STOCKS AND OTHER SECURITIES

none

18C. VALUE OF FURNITURE

\$ 8,000

18D. OTHER ASSETS OR ADDITIONAL SOURCES OF INCOME

800- merchandise on hand.

18E. MAKE AND YEAR OF CAR

none

19. STATEMENT OF OTHER OBLIGATIONS (Installment purchases, car payments, etc.)

ACC #	NAME AND ADDRESS OF CREDITOR	ORIGINAL AMOUNT	UNPAID BALANCE	AMOUNT DUE MONTHLY	DELINQUENCIES (if any)
8750-303543-V7000	Inter Island Mtge Corp. 176-60 Union T'pike Flushing, NY 11366	\$ 24,500	\$ 23,000	\$ 200-	none
	Dale Funding Corp. 0520 Savoy B'klyn B'klyn, N. Y. 11216	\$ 8,500	\$ 7,000	\$ 113-	none

If additional space is needed, continue this table on an attached sheet.

INSTRUCTIONS - If the answer to any question in item 20 is "Yes", give a detailed statement of circumstances on a separate sheet. "Close relative" as used, means the spouse, parents, children, brothers and sisters, or any other relative who is a member of the purchaser's household.

20. IS THIS PROPERTY BEING PURCHASED DIRECTLY OR INDIRECTLY BY OR FOR ANY OF THE FOLLOWING PERSONS OR THEIR CLOSE RELATIVE?	21. DO YOU PLAN TO OCCUPY THIS PROPERTY?
YES NO	☐ YES ☒ NO
X A. ANY PERSON WHO AT ANY TIME OBTAINED OR ASSUMED THE PAYMENT OF ANY LOAN MADE OR HELD BY THE VA OR GUARANTEED OR INSURED BY THE VA UNDER CHAPTER 37, TITLE 38, U.S. CODE	22. NO LOAN, DEBT OR OTHER FINANCIAL ASSISTANCE IN CONNECTION WITH THIS PURCHASE HAS BEEN, OR WILL BE, RECEIVED BY ME EXCEPT (If none, write "NONE")
X B. ANY PERSON EMPLOYED BY THE VA OR RENDERING SERVICES TO THE VA ON A FEE OR COMMISSION BASIS, INCLUDING THE OWNER, PARTNER, OFFICER, OR EMPLOYEE OF ANY FIRM RENDERING SUCH SERVICES TO THE VA OR ANY PERSON HAVING A SUBSTANTIAL INTEREST IN SUCH FIRM	
X C. ANY PERSON WHO HAS AT ANY TIME THE OWNERSHIP OF THE PROPERTY	
X D. ANY PERSON WHO HAS PREVIOUSLY PURCHASED A HOME FROM THE VA	none

23A. OFFER PRICE \$ 8,000	23B. DOWN PAYMENT \$ 100-	23C. CASH PAYABLE AT SALE CLOSING \$ 400-	23D. PAYABLE \$ 7,500-	23E. MATURITY 10 YEARS	23F. INTEREST RATE 7 1/2 %	23G. VA GUARANTEE 6.9 %
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My negotiations for this purchase have been exclusively through the sales broker named below. I offer to purchase the property herein described at the above price and terms, subject to all the conditions of this Contract of Sale shown below which I have read and which constitute part of my offer. I understand this property is subject to prior sale, change of price or withdrawal from the market, and to approval and acceptance by the Veterans Administration. I have examined this property and agree to accept same in its present "as is" condition, and further agree that VA makes no warranties, expressed or implied, with respect thereto. It is understood and agreed that acceptance of this offer by VA can be evidenced only by the delivery to me of a copy hereof, executed by a duly authorized officer of VA.

IMPORTANT NOTICE: Both Prospective Purchaser and Spouse are liable for payment of the Purchase Price.	
24A. DATE SIGNED 4/15/72	24B. SIGNATURE OF PROSPECTIVE PURCHASER <i>James L. O'Donnell</i>
25A. DATE SIGNED	25B. SIGNATURE OF SPOUSE

SECTION III - RECEIPT FOR DEPOSIT AND TRANSMITTAL OF OFFER BY SALES BROKER TO THE VETERANS ADMINISTRATION		
26. NAME OF SALES BROKER (Type or print) Hawley & Hawley, Inc.	27A. ADDRESS OF SALES BROKER (Type or print) 232011 Merrick Blvd. Laurelton, N.Y.	27B. TELEPHONE NO. OF SALES BROKER 973-1940 Klarnet

- I, the undersigned sales broker, have received from this prospective purchaser the deposit shown in item 23B which I am holding for the Veterans Administration for disposition as instructed by VA. I agree that I am acting in the capacity of Trustee of these funds which will be placed by me in a separate bank account. If this purchase offer is accepted by VA, this deposit shall be transmitted by me to VA for retention by VA. If the purchase offer is not accepted by VA, the deposit shall be returned to the prospective purchaser, without interest.
- The statements of the prospective purchaser in Sections I and II are believed to be true and correct. I do not know of any loans, gifts, or financial assistance being made to the prospective purchaser. I will disclose to VA any such coming to my attention.
- It is understood and agreed that the sales commission shall not be deemed earned unless and until the sale is actually closed, and also that the sales commission shall be payable in amount and time as established by VA. I certify that neither I nor anyone authorized to act for me has declined to sell this property or to make it available for inspection or consideration by a prospective purchaser because of his race, creed, color, or national origin.

28. CREDIT REPORT ☐ ATTACHED ☒ ORDERED ☐ NOT ORDERED	29A. DATE SIGNED 4/15/72	29B. SIGNATURE OF SALES BROKER <i>Barbara L. Hawley, Pres</i>
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PENALTY: The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it to be false.

SECTION IV - ACCEPTANCE BY VETERANS ADMINISTRATION	
Acceptance of this offer is hereby evidenced by my signature below and by the return to the purchaser of a copy hereof.	
30A. DATE SIGNED 4/24/72	30B. THE ADMINISTRATOR OF VETERANS AFFAIRS By <i>James L. O'Donnell</i> Loan Guaranty Officer

NOTE TO PROSPECTIVE PURCHASER: If offer is not accepted it will not be signed in item 30B on behalf of VA and the prospective purchaser will be notified of the rejection through the broker.

CONDITIONS OF SALE	
1. The Purchaser will pay for any examination or continuation of title as he may require, documentary stamps on the deed of conveyance by the Seller and on all other closing instruments, recording taxes, recording fees, escrow fees, and any other expenses incidental to the closing of the sale. Any title evidence in the possession of the Seller will be made available to the Purchaser for examination upon request and is to be returned to the Seller at the closing. When the purchase price has been paid in full said title evidence will be delivered to the Purchaser. 2. The Seller will prepare standard VA forms the instruments required for closing the sale. At that time, the Seller, at Seller's option, will either enter into an installment contract or will deliver his deed of conveyance. The deed will contain a covenant which warrants against the acts of the Seller and all claiming by, through, or under him, conveying good title to said real estate subject to easements, restrictions and agreements of record, said deed to be delivered simultaneously with the execution and delivery by the Purchaser to the Seller of a mortgage or deed of trust, and note covering the balance of the purchase price. If the sale is under an installment contract, said contract will provide for delivery of such deed and the necessary note or bond and security instruments at the time determined by the Seller. 3. In addition to the monthly installments of principal and interest shown in item 23G, the Purchaser will pay monthly 1/12 of the annual charges estimated by Seller for hazard insurance, ground rents (if any), and any and all taxes and assessments now or hereafter levied against the property, in order that Seller may pay such charges when due. 4. The Purchaser agrees to pay sufficient money for the Seller to properly establish escrow accounts necessary to cover taxes, assessments, ground rents, (if any), and hazard insurance required by him, and to furnish hazard insurance policies satisfactory to the Seller with loss payable clauses in favor of the Seller, his successors or assigns, said policies to be delivered at closing to the Seller, together with receipts for the payment of the first premium, and to be effective as of the closing date. 5. All assessments, rents (if any), ground rents (if any), and taxes shall be prorated as of the closing date, and the Purchaser will assume all taxes, assessments, and ground rents (if any), accruing on and after the closing date. Closing date shall be as soon as possible and within a reasonable time after indication by the Seller of readiness to close. Seller will also indicate place of closing.	6. This sale is subject to the rights of any parties in possession. 7. Should the Purchaser make valid objection to the title prior to the closing of the sale and the Seller be unable or unwilling to remove or comply with such objection, or should the Seller be unable to deliver the property vacant if so stipulated herein, or in the event of disagreement with respect to any other provision of the sale, the Seller may at any time rescind this Contract of Sale, in which event the earnest money deposited by the Purchaser will be returned. The return of the earnest money shall release the Seller from any and all claims arising from this transaction. 8. In the event the property herein described has not been acquired or the title thereto has not been approved by the Seller, then this contract is contingent upon such acquisition and approval of title by the Seller. In the event such property is subject to outstanding redemptions and such rights are exercised, the Seller shall be entitled to the redemption money and shall return to the Purchaser all payments made by him to the Seller on account of this sale, without interest, less the fair rental value and thereupon there shall be no further liability hereunder between the parties hereto. 9. Risk of loss or damage by fire or other causes is assumed by the Seller until the sales transaction is closed. If the property is damaged prior to the date of closing, the Seller reserves the right to terminate this contract upon returning to the Purchaser all deposits received by the Seller or the Broker. 10. The Purchaser will inform the Seller of any changes in employment and/or financial position, including bankruptcy, judgments, pending litigation, income tax liens, assignment for the benefit of creditors, and other similar matters. In the event the Seller, in his sole opinion, shall have determined that the Purchaser's credit standing at any time prior to sales closing no longer warrants extension of credit contemplated hereunder, the Seller may rescind this Contract of Sale. The return of the earnest money deposited by the Purchaser shall release the Seller from any and all claims arising from this transaction. 11. This Contract of Sale contains the final and entire agreement between the parties hereto and they shall not be bound by any terms, conditions, stipulations, or representations, oral or written, not herein contained. This Contract of Sale is not assignable by the Purchaser. 12. Purchaser acknowledges that he has read and agrees to the entire Contract of Sale, including these conditions.

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U.S. State Court
For the 2nd Circuit

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I NEVER HAD DAY IN COURT

THE PROSECUTION NEVER GOT THE D

WHEN THE TRIAL STARTED THE PRO

SECURITY MAN V. PRINCE DAVIS

FOR A RACE AND A BRIGHT I AM

ASKING THE COURT NOT TO AFFIRM

ASK THE COURT TO RETURN MY

NAME TO SEVERAL OTHERS TO US COURT

FOR THE SAME REASON I AM

THE COMPLETE FILE

THE PROSECUTION COURT

THE COURT CONTINUED

THE SIGN I DID NOT

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75-2782

Miss Davis

U.S. State Court of NY
FOR THE 2ND CIRCUITMILLSAP
VS

8-15-75

JOHNSON

75-6071

I HAVE BEEN DULY SWORN THAT
I AM A RESIDENT OF CHICAGO NOW RETIRED
AND LIVE IN ILL STATE I BOUGHT ^{TWO} ~~ONE~~
HOMES S VETERAN ADMINISTRATION
IN NEW YORK CITY IN BRONX NEW
YORK THEY WAS AN DEMOLITION
and one I WENT TO CONTRACTOR
I CLOSE ON 655 E 165th AND YAP E 159
STREET ~~BT~~ BUT I DID NOT CLOSE
ON 1167 STEBENS IN BRONX NEW
YORK I SERVE IN WORLD WAR TWO
THE GOVERNMENT PROMISE TWO
MAE GOOD FOR VETERAN WHEN
THE WAR WAS OVER THE REASON I DID
NOT CLOSE ON 1167 STEBENS ARE BECAUSE
I FOUND OUT IT WAS ANER DEMOLITION

JIM WILL SOLD THESE HOUSE UNDER
 DEMOSISON JEWS HAS NEVER
 DID NOTHING RIGHT IN THERE
 LIKE THESE WAS JEWS THAT SOLD
 ME THE PROPERTY THE GOVERN-
 MENT WILL TRY ~~ANY~~ ANY THING
 THE GOVERNMENT WILL TRY
~~ANY~~ ANY THING TO PUT YOU IN JAIL
 SO CITIZEN HAVE THE SAME RIGHT
 TO HAVE HIS MONEY RETURN YOU
 CAN NOT SUE A GOVERNMENT EMPLOYEE
 D. E. JOHNSON IS A CABINET
 OFFICER AND CAN BE SUED THE
 CITY OF NEW YORK DEMOSIS BY
 BUILDING A655 E 165 IN BRONX NEW
 YORK THEY DID NOT NOTIFIED ME
 THEY NOTIFIED THE VETERAN
 ADMINISTRATION IN NEW YORK
 THE WAY I FOUND OUT I TALK TO
~~THE~~ VICK ROY IN NEW YORK AT THE VET
 A JEWS IS ALWAYS TRYING TO TAKE
 THING AWAY FROM SOME BODY

I NEVER HAD DAY IN COURT.
 THE ATTORNEY NEVER NOTIFIED
 WHEN THE TRIAL CAME UP SHE
 ATTORNEY ^W PAMELIA DAVIS
 IS A RACIST AND A BRIGHT. I AM
 ASKING THE COURT NOT TO AFFIRM.
 I ASK THE COURT TO RETURN MY
 MONEY OR SEND IT BACK TO US. COURT
 FOR TRIAL SHE NEVER GAVE
~~FOR~~ THE COMPLETE FILE
 THE INSLAMENT CONTRACT
~~FOR~~ SALE CONTRACT IN COURT
~~SHE~~ I SIGN. I DID NOT HAVE A
 DAY IN COURT. ~~SO~~ SO I ASK
 AGAIN NOT TO AFFIRMED TO RETURN
 TO THE DISTRICT COURT FOR TRIAL
 OR RETURN NOT TO THE DISTRICT
 COURT FOR TRIAL.

Samuel M. Schecter
 1109 W. 102 St
 Chicago IL 60620
 312 2396575

Sworn to before me
 this 17 day of Sept 1975
 Corrine M. Schecter

MILLER
VS
JOHNSON

9-17-75
15 C. 6073

By Sub mission
of ... to ...
...
...

The ...
...

MILLSAP
VS
JOHNSON

9-17-75
75 C 6071

A 77

By submission

I am going to ask That V Pamela Davis motion be denied in
all Respect I never was notified of the Trial I never receive
any paper only way I know was when I came down to the Southern
District She is a Liar (?) if she say any thing Else She has (?)
Lied all the way Through this Case I find out about it This
year in May of 1975

Israel Millsap
1109 W 10th Street
Chicago Ill
6064
3122396575

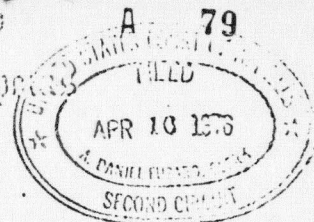
At a session of the United States Court of Appeals, in and for the District of Columbia, held at the Court House in the City of New York, on the 15th day of April, one thousand nine hundred and twenty-six.

At:

HON. DON C. CLARK
Associate Justice, United States District Court, District of Columbia
HON. WILLIAM H. CLARK
HON. ROBERT A. CLARK

United States Court of Appeals

FOR THE
SECOND CIRCUIT



At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at
the United States Courthouse in the City of New York, on the 16th day of
April, one thousand nine hundred and seventy-six.

Present:

HON. TOM C. CLARK
Associate Justice, United States Supreme Court, Retired
HON. WILLIAM H. TIMBERS
HON. ELLSWORTH A. VAN GRAAFEILAND

Circuit Judges.

ISRAEL MILLSAP,

Appellant,

v.

DONALD JOHNSON, Administrator of
Veterans Affairs,

Appellee.

75-6071

Appeal from the United States District Court for the Southern
District of New York.

This cause came on to be heard on the transcript of record from the United States District Court
for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that
the judgment and order of said District Court ~~transmitted~~
dated June 24, 1975 be and it is hereby affirmed for the reason that Judge
Ryan's denial of plaintiff's motion to reopen the earlier judgment of
February 7, 1974 pursuant to Rule 60(b), Fed. R. Civ. P., constituted a
sound exercise of the District Court's discretion.

TOM C. CLARK
Associate Justice

WILLIAM H. TIMBERS

ELLSWORTH A. VAN GRAAFEILAND

Circuit Judges

11. 2. 1910
The following is a list of the

1. 1. 1910

D. L. Johnson

7. 14. 1910

7. 15. 1910

The following is a list of the

"I have been thinking
 of you very much lately
 and wondering how you
 are getting on. I hope
 you are well and happy.
 I have been very busy
 lately but I will write
 to you again soon.
 Love,
 John D. Rockefeller

John D. Rockefeller

1. The first section of the report
describes the work done in the
year 1911 and the progress made
in the various departments.
It contains a list of the names of the
persons who have been employed
during the year and a statement of
the amount of money expended.

The second section of the report
contains a list of the names of the
persons who have been employed
during the year and a statement of
the amount of money expended.

1911

United Court of Appeals
For the 2nd Circuit

MILLSAP

VS
DE Johnson

4-14-76

75 C-6071

Bye Submission

I have been dully sworn that I am a Resident of Chicago a Live in Ill Now Retired (?) and Live in Illonois state The Vetean Administrater wilful and knownly sold this property under Demolition They knew all about it and use a Lying and Cheating U.S. Attorney Bye the name V Pamela Davis to cheat me out of money This in defaud ? ? a ? of ? is ? all kind of Lien on the Bldg and They did not say any ting about it You are suppose to Give people property free and clear of Lien and ? Judgement and not sellig people property ? under Demolition They did not Tell me me the property was under Demolition The state of New York put This Bldg under Demolition Long before I Bought it I never did Get the U S Attorney Brief I don't know what in I wanted to be presence for oral argument I file a motion abot 1 o'clock April 14 1976 it was denied about jest as fast I can't be in ? Court at one time But This what a Negro have to Expect The Court granted The US Atty motion for Elagment Time She didn't even ? Until she got ready Serve ? Call my home in Chicago This after ? night after I filed My Brief said it was denied she white I am a negro I unterstand So I am not telling You what To Jest ? Justice

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Israel Millsap
9537 Prairie
Chicago Ill
312 In 8 3788

STATE OF NEW YORK, COUNTY OF ?

SWORN TO BEFORE ME THIS _____ DATE OF April 1976

Edgar Halpern

EDGAR ? HALPERN
Notary Public, State of New York
No. 31-1644750 ?
Commission expires ? 1977

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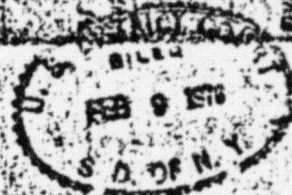
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1. *Journal of the American Statistical Association*, 93 (1998), 103-110.



ISREAL MILLSAP v. D.E. JOHNSON or his Successor and the
VETERANS ADMINISTRATION, 75 Civ. 5160

ENDORSEMENT ORDER

By the attached notice of motion, defendants move to dismiss the pro se complaint pursuant to Rule 12(b) Fed.R.Civ.P. on the ground that the instant action is barred by principles of res judicata. For the reasons stated, the motion is denied.

Defendants' motion is based upon the history of another case brought by plaintiff in this Court, Millsap v. Johnson, 72 Civ. 4418. The history of the two cases may be summarized as follows:

In his complaint in 72 Civ. 4418, plaintiff alleged that he purchased two buildings from the defendants and that he contracted to purchase a third. The complaint charged that defendants sold the buildings to plaintiff without informing him of multiple liens and violations on the structures or that the buildings were essentially uninhabitable. For relief, plaintiff sought money damages.

Defendants moved for summary judgment in 72 Civ. 4418, and that motion was granted and the complaint dismissed on the merits in an order signed by Judge Sylvester Ryan dated February 6, 1974. Judgment was entered thereon on February 7, 1974.

According to papers later filed in this action, the three buildings were demolished by the City of New York following condemnation some time in 1974. However, plaintiff now alleges that he did not know of the destruction of the structures until May of 1975. On May 8, 1975, plaintiff moved to reopen the judgment entered against him before Judge Ryan, alleging for the first time the demolition of the buildings by the City of New York and alleging that the Veterans Administration knew of the pending demolition when it sold the structures to plaintiff.

75 Civ. 5160 (cont.)

Judge Ryan referred the matter to Magistrate Baby, who in a Report dated June 2, 1975, recommended that the motion to reopen be denied because plaintiff has not demonstrated that any of the provisions of Rule 60(b) were applicable and because the motion was in any event time barred under Rule 60(b). In a brief order dated June 24, 1975, Judge Ryan adopted the Report of the Magistrate and denied the motion to vacate the previous judgment. Plaintiff has taken an appeal from that order to the Court of Appeals for the Second Circuit, which appeal is still pending.

On September 30, 1975, or thereabouts, plaintiff commenced a pro se action in state court against the City of New York, D.E. Johnson and the Veterans Administration. That dispute was removed to this Court by petition of removal filed October 20, 1975.

In the complaint in this action, plaintiff seeks damages in amounts different from those demanded in 72 Civ. 4418 and alleges the demolition of the buildings. Plaintiff also charges that the Veterans Administration knew of the pending demolition at the time of the sales. In short, the complaint alleges the same operative facts which were contained in plaintiff's affidavit in support of his motion to reopen the judgment in 72 Civ. 4418. However, this action named the City of New York as an additional party defendant.

The defendants herein now move for dismissal on res judicata grounds. Plaintiff opposes the motion, asserting broadly that "[t]his case has nothing to do with 72 C 4418 now before the 2nd Circuit." Apparently, plaintiff's position is that this controversy concerns the demolition of the buildings and that 72 Civ. 4418 concerned the failure of the defendants to adequately perform certain contractual warranties. The Court finds itself in agreement with plaintiff, particularly in light of his new allegations concerning events of which he alleges he had no knowledge until after Judge Ryan's original dismissal of the complaint in 72 Civ. 4418.

In Angel v. Bullington, 330 U.S. 183 (1947), Justice Frankfurter wrote for the Court as follows:

"The doctrine of res judicata reflects the refusal of law to tolerate needless litigation. Litigation is needless if, by fair process, a controversy has once gone through the courts to conclusion And it has gone through if issues that were or could have been dealt with in an earlier litigation are raised anew between the same parties."
(Id. at 192-93)

See also Pfeiffer v. United States, 385 F.Supp. 367, 371 (E.D. Mo. 1974).

It is clear that Judge Ryan's original grant of summary judgment in 72 Civ. 4418 was an adjudication on the merits. Accordingly, plaintiff is foreclosed from relitigating the allegations of that complaint which, in essence, charged certain breaches of warranty. However, Judge Ryan's refusal to reopen the judgment in 72 Civ. 4418 was apparently based on the reasons set forth by the Magistrate, i.e., that plaintiff had not demonstrated sufficient good cause, excusable neglect, or newly discovered evidence in order to succeed on a Rule 60(b) motion, particularly where the motion was made in excess of a year following the original judgment. Thus, this Court concludes that Judge Ryan's Order of June 24, 1975 did not adjudicate the merits of plaintiff's new claim concerning the demolition of the buildings.

In a case with a similar procedural history, the Fifth Circuit ruled that res judicata is inapplicable if the second action alleges new matters not contained in the original complaint. United States v. Wooten, 343 F.2d 214 (5th Cir. 1965). While it is true that a "minor addition" to the allegations of the complaint

71 Civ. 3160 (cont.)

will not overcome the bar of res judicata, see Stuhl v. Tauro, 476 F.2d 233, 234 (1st Cir. 1973), if the second action alleges new facts which have been discovered following the first adjudication, res judicata does not bar the suit. See United States v. Wooten, supra, at 216-17; Estevez v. Habers, 219 F.2d 321, 323 (5th Cir. 1955).

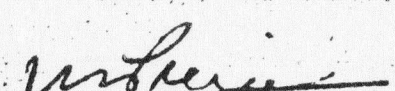
In Wooten, supra, plaintiff's first action went to an adverse judgment on the merits. Plaintiff thereafter made an unsuccessful Rule 60(b) motion, seeking to reopen the judgment on the ground of newly discovered evidence. That motion was denied for failure to show that plaintiff's neglect was excusable. Plaintiff thereafter filed a new action, alleging the new facts, and the district court dismissed the action on res judicata grounds. In reversing the dismissal, the Circuit Court in effect stated that the denial of the motion to reopen could not be said to constitute an adjudication on the merits of the new allegations. Wooten, supra, at 216.

This principle is not inconsistent with the general rule that res judicata bars all issues which were or which could have been raised. As in Wooten, the new allegations were based on information which plaintiff avers he did not receive until after the filing of the first complaint and after the adjudication on the merits by Judge Ryan in 72 Civ. 4418.

On the basis of the record, the Court concludes that the doctrine of res judicata is inapplicable to all aspects of the instant action. While plaintiff may not relitigate those matters ruled on by Judge Ryan, he has a right to a decision on the merits regarding his claim concerning the demolition of the buildings. Without expressing any opinion as to the merits of that claim, the Court concludes that defendants' motion should be, and hereby is, denied.

SO ORDERED.

Dated: New York, New York
February 5, 1976


LAWRENCE W. PIERCE
U. S. D. J.

and says that he is employed in the office of _____
 _____ United States Attorney for
 the Southern District of New York, attorney for the _____
 herein.

That on the _____ day of _____, 19 _____, he did serve a true copy of
 the hereto annexed _____

Form 280 A-Affidavit of Service by Mail
 Rev. 12/75

AFFIDAVIT OF MAILING

State of New York)
 County of New York) ss

MANUEL BERGUEZ being duly sworn,
 deposes and says that he is employed in the Office of the
 United States Attorney for the Southern District of New York.

That on the
 7th day of July, 19 76 he served a copy of the
 within Gov'ts N/1 w/ Memo of Law

by placing the same in a properly postpaid franked envelope
 addressed:

ON MOTION

And deponent further
 says he sealed the said envelope and placed the same in the
 mail chute drop for mailing in the United States Courthouse Annex,
 One St. Andrews Plaza, Borough of Manhattan, City of New York.

Sworn to before me this _____
 7th day of July, 19 76

PAUL L. LEE
 Notary Public, State of New York
 200 E. 10th St., Queens County
 Term Expires March 30, 1977

You will please take notice that a _____
which the within is a copy, was this day
entered in the within entitled action,
the office of the Clerk of this Court.

Dated, N. Y., _____, 19 _____

Yours, etc.,

United States Attorney
Attorney for _____

Attorney for _____

Please take notice that the within _____
be presented for settlement and sig-
nature of the Honorable _____
United States District Judge, at the office of
Clerk, Room 601, United States Court-
house, Foley Square, Borough of Manhat-
tan, City of New York, on the _____ day of
_____, 19 _____, at 10:30 o'clock in the
_____ noon or as soon thereafter as coun-
sel can be heard.

Dated, N. Y., _____, 19 _____

Yours, etc.,

United States Attorney
Attorney for _____

Attorney for _____

United States District Court

SOUTHERN DISTRICT OF NEW YORK

ISRAEL MILLSAP,

Plaintiff,

- v -

CITY OF NEW YORK, DONALD E.
JOHNSON, et al.,

Defendants.

NOTICE OF MOTION & AFFIDAVIT

75 Civ. 5160 (CSH)

ROBERT B. FISKE, JR.

TEL. 264-2344
791-1967

United States Attorney
Attorney for Fed. Def't's.

Due service of a copy of the within is here
by admitted.

New York, _____, 19 _____

Attorney for

To

Attorney for

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
FILED 7-7-76
S.D. of NEW YORK

-----	x	
ISRAEL MILLSAP,	:	
	:	
Plaintiff,	:	75 Civ. 5160 (CSH)
	:	
- v -	:	
	:	
CITY OF NEW YORK, DONALD E.	:	
JOHNSON, or his successor and	:	
VETERANS ADMINISTRATION,	:	
	:	
Defendants.	:	
-----	x	

MEMORANDUM OF LAW

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for Federal Defendants.

Attorney for Federal Defendants.

V. PAMELA DAVIS
Assistant United States Attorney

- Of Counsel -

VPD:mkb
 75-3447
 H-1838

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

----- x

ISREAL MILLSAP, :

Plaintiff, :

75 Civ. 5160 (CSH)

- v - :

CITY OF NEW YORK, DONALD E. :
 JOHNSON, or his successor and :
 VETERANS ADMINISTRATION, :

Defendants. :

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MEMORANDUM OF LAW

This memorandum is submitted in support of the attached motion to dismiss the complaint pursuant to Rule 12(b)(1) and (6) of the Federal Rules of Civil Procedure or, in the alternative, for a protective order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure vacating a notice of deposition presently set for August 19, 1976. It is also requested that the deposition be stayed pending determination of these motions.

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838STATEMENT OF FACTS

In 1972, plaintiff commenced an action against the Veterans Administration ("V.A.") complaining of the conditions of three buildings, two of which he had purchased from the V.A. and one of which he contracted to purchase. The V.A. demonstrated that the buildings had been sold for unusually low prices on an explicitly "as is" basis. Summary judgment was granted the V.A. on February 6, 1974. Mr. Millsap did not appeal.

Over a year later, on May 8, 1975, plaintiff moved to reopen this action alleging that New York City had demolished one of the buildings at 655 East 165th Street in the Bronx. This motion was denied on June 24, 1975. This time plaintiff appealed. The denial of the motion to reopen was affirmed April 16, 1976. Meanwhile, plaintiff commenced this action in State Supreme Court again alleging the demolition of the building and seeking damages from the V.A. This action was removed to this Court on October 20, 1975. The V.A. moved to dismiss the complaint as barred by the res judicata effect of the original action. This was denied by Judge Pierce on February 9, 1976.

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Plaintiff has noticed the deposition of two employees of the V.A. presently set for August 19, 1976.

POINT I

PLAINTIFF HAS FAILED TO STATE
A CLAIM PURSUANT TO WHICH
RELIEF CAN BE GRANTED.

According to the opinion of Judge Pierce, Mr. Millsap is barred by res judicata from asserting claims arising from the sale of the building to h. is not so barred from asserting a claim for damage. in the demolition of the building by New York City.

The viability of such an action has been recently foreclosed. The Supreme Court and the Second Circuit have both held that no action for damages against the United States will lie unless the statute violated specifically authorizes such a remedy. United States v. Testan, _____ U.S. _____ (1976); 96 Sup. Ct. 948; 44 U.S.L.W. 4245, March 2, 1976 (No action for damages for alleged violation of Administrative Procedure Act). Duarte v. United States, 532 F.2d 850 (2d Cir. 1976) (No action for damages for alleged violation of Constitutional right to due process.).

In Testan the Supreme Court stated;

It long has been established, of course, that the United States, as sovereign, "is immune from suit save as it consents to be sued . . . and the terms of its consents to be sued in any court define that court's jurisdiction to entertain the suit."

United States v. Sherwood, 312 U.S. at 586.

And it has been said, in a Court of Claims context, that a waiver of the traditional sovereign immunity "cannot be implied but must be unequivocally expressed." United States v. King, 395 U.S. at 4; Soriano v. United States, 352 U.S. 270, 276 (1957).

Thus, except as Congress has consented to a cause of action against the United States, "there is no jurisdiction in the Court of Claims more than in any other court to entertain suits against the United States." United States v. Sherwood, 312 U.S. at 587-588.

* * *

It follows that the asserted entitlement to money damages depends upon whether any federal statute "can fairly be interpreted as mandating compensation by the Federal Government for the damages sustained." Eastport Steamship Corp. v. United States, 178 Ct. Cl., at 607, 372 F.2d, at 1009; Rosca v. United States, 189 Ct. Cl. 233, 290, 417 F.2d 1382, 1386 (1969), cert. denied, 399 U.S. 911 (1970). We are not ready to tamper with these established principles because it might be thought that they should be responsive to a particular conception of enlightened governmental policy. * * * In a suit against the United States, there cannot be a right to money damages without a waiver of sovereign immunity, and we regard as unsound the amici's argument that all substantive rights of necessity create a waiver of sovereign immunity such that money damages are available to redress their violation. 44 U.S.L.W. 4245 at 4247-8.

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The statute involved in Testan was the Administrative Procedure Act, the only statute arguably applicable to Mr. Millsap's case. The Supreme Court held it did not specifically provide for money damages.

A cause of action for damages does lie against individual Federal employees for violations of the Fourth Amendment, Bivens v. Six Unknown Narcotic Agents, 403 U.S. 388 (1971). However, the only individual named by Mr. Millsap is Donald E. Johnson, Administrator of Veterans Affairs and Mr. Millsap's complaint makes no direct allegations against Mr. Johnson, Constitutional or otherwise.

The latitude appropriately afforded pro se litigants does not vitiate the requirement that this Court's jurisdiction may only be exercised for a judicially cognizable cause of action. Under the authority of Duarte and Testan, the complaint must be dismissed.

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POINT II

DEPOSITION OF THE NOTICED INDIVIDUALS
WOULD CAUSE MR. MILLSAP UNNECESSARY
EXPENSE AND EXPOSE THE DEponents TO
UNNECESSARY ANNOYANCE

Mr. Millsap has already been provided with the only information which the V. A. has concerning New York City's demolition of the 165th Street building. The two letters which were turned over show that as soon as the V.A. was informed of the pending demolition in 1973 it passed this information on to Mr. Millsap. In addition, the letter from the Borough President states that New York City intended to itself inform Mr. Millsap.

The V.A. letter is not signed by either noticed deponent nor is there any indication in the record of any involvement on their parts with Mr. Millsap. Indeed, they have represented that they have no personal knowledge whatever of anything relevant to Mr. Millsap's complaint. It would seem that they came to Mr. Millsap's attention solely by virtue of having been present when an angry Mr. Millsap appeared at their office some time last year. Thus, their deposition would result in a fruitless expenditure for Mr. Millsap.

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K-7838

A 102

Rule 26(c) of the Federal Rules of Civil Procedure authorizes a protective order from discovery which would cause "annoyance, embarrassment, oppression, or undue burden or expense . . .". Mr. Millsap's written submissions themselves bespeak his cavalier use of insult and epithet. I have been variously described as a liar, a cheat, a racist and a bigot. The V.A. has been the target of anti-Semitic diatribes while the Office of the Clerk of the Second Circuit was accused of white supremacy. It is likely that the "deposition" would be no more than a forum for the venting of Mr. Millsap's considerable spleen. This would be a distasteful necessity were there a legitimate discovery purpose to be served. Here, however, it is precisely the sort of annoyance that Rule 26(c) was designed to prevent.

CONCLUSION

For the foregoing reasons defendants' motions should be granted.

Dated: New York, New York

July 6, 1976

Respectfully submitted,

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for Federal Defendant

V. PAMELA DAVIS
Assistant United States Attorney

- Of Counsel -

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
ISRAEL MILLSAP, :

Plaintiff, :

-against- :

D. E. JOHNSON or his successor; :
VETERANS ADMINISTRATION, :

Defendants. :
----- x

75 Civ. 5160-CSH

PRE-TRIAL ORDER

The above-captioned case having been called for pre-trial conference on June 21, 1976, it is now ORDERED as follows:

1. Plaintiff's prior letter notice of depositions, dated February 25, 1976, calling for the production of Mr. Vaughn and Mr. Vickroy, shall be deemed extended so as to require the presentation of these witnesses for depositions on August 19, 1976.

2. The Court at its discretion may grant the Plaintiff for a protective order in respect of these depositions, and/or its motion to dismiss, not later than July 7, 1976.

Dated: New York, New York
July 6, 1976

U. S. D. J.

Honorable State District Court

75C14 5160

(~~CSH~~)
CSH

MILLSAP

VS

A 104

DONALD E JOHNSON ~~and~~
OR HIS SUCCESSOR

I have been duly sworn that
I am a resident of Chicago now retired
and live in Ill State I am ask
the Court not to delay ~~the~~
the departure matter set for
August 19 1976 I ask that departure
not to be stayed ~~the~~ determination
of these matters V Pamela
Davis is a feed in doing this

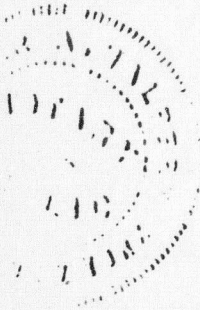
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Director of Veterans Affairs Success
to D. E. Johnson my Lawyer
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is in another city but they know
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A 107
I was born in Mississippi
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V. Pamela Davis know
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woman. I wish. She said
~~I shall~~ talk to them some
kind way what kind way
she wanted me to talk to them
I am no Uncle Sam I have
no love for white people
~~that~~ know more then they
got for me. They took my money
I did not take any thing from
them.

Israel Miller
9537 Prairie
Chicago Ill
60628

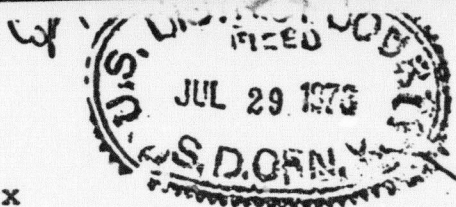
STATE OF NEW YORK, COUNTY OF. New York
SWORN TO BEFORE ME THIS 7 DATE OF July 1971



Edgar Halpern

EDGAR A. HALPERN
NOTARY PUBLIC, State of New York
No. 31-1644750
Qualified in New York County
Commission Expires March 30, 1973 1972

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



A 109

----- x
ISRAEL MILLSAP,

Plaintiff,

-against-

CITY OF NEW YORK, DONALD E.
JOHNSON, or his successor and
VETERANS ADMINISTRATION,

Defendants.
----- x

75 Civ. 5160 (CSH)

MEMORANDUM AND ORDER

44875

Haight, D. J.

The Government moves for dismissal of the complaint pursuant to Rule 12(b)(1) and (6), F.R.C.P., or in the alternative for a protective order pursuant to Rule 26(c) vacating plaintiff's notice of depositions of two Veterans Administration employees. Those depositions are currently scheduled to be held on August 19, 1976.

The litigation between plaintiff Israel Millsap and the Veterans Administration ("V.A.") goes back a number of years. It arises out of the purchase by plaintiff in 1972 of three buildings from the V.A. On October 17, 1972 plaintiff, appearing pro se, filed a complaint in this court (72 Civ. 4418) against Donald E. Johnson, the V.A. administrator, alleging that the buildings were covered by liens and violations, and were not fit to live in. The Government moved for summary judgment on the ground that the contracts of sale specified that the buildings were sold on an "as is" basis, without any warranties. This court granted summary

judgment dismissing the complaint in 72 Civ. 4418, and thereafter denied plaintiff's motion under Rule 60(b), F.R.C.P., to reopen the judgment, a denial which the Court of Appeals affirmed.

Thereafter plaintiff commenced the present action (75 Civ. 5160) in the Supreme Court of the State of New York. The Government removed the case here. The complaint is against the City of New York, the V.A. administrator, and the V.A. The gravamen of plaintiff's new suit is that one of the buildings he purchased, at 655 East 165th Street in the Bronx, was demolished by the City in 1974; and that the V.A. knew of the intended demolition at the time of the building's sale to plaintiff and concealed that fact from plaintiff.

Plaintiff's complaint demands \$25,000 in money damages from the City and \$15,000 from the V.A. It does not appear that service was ever made on the City, and it has played no part in the litigation.

The Government moved to dismiss the complaint in 75 Civ. 5160 on the basis of res judicata, relying on the outcome of the proceedings in 72 Civ. 4418. Judge Pierce denied that motion for the reason that plaintiff's claim arising out of the demolition of the 165th Street building had not been pleaded in the prior suit, it further appearing that plaintiff was not aware of the demolition at the time he filed his original suit.

The Government now moves for dismissal on a different ground, namely, that this court has no power to award plaintiff money damages in the circumstances of the case. Reliance is

placed upon United States v. Testan, ___ U.S. ___ (1976), 96 Sup. Ct. 948, 44 U.S.L.W. 4245, cited and applied in Duarte v. United States, 532 F.2d 850 (2d Cir. 1976).

The Testan and Duarte cases stand for the proposition that, under sovereign immunity principles, the United States is not liable for money damages in the absence of an express statutory provision that it must respond for such damages. Testan holds that neither the Classification Act, 5 U.S.C. §5101 et seq., nor the Tucker Act, 28 U.S.C. §1491, created a substantive right enforceable against the United States for money damages; accordingly, the plaintiffs in that case, Government trial attorneys who contended that their duties and responsibilities entitled them to a higher grade, were held not entitled to money damages in respect of their improper classification. In Duarte, the Second Circuit, relying on Testan, held that the plaintiff's claim of violation of Fifth Amendment guarantees of due process did not entitle him to money damages, even though he had been deprived of his merchant mariner's document by the Coast Guard in violation of those guarantees.

While the general principle announced by these cases is, of course, well established, neither case is directly applicable to the case at bar, in which plaintiff entered into a contract with the V.A. for the sale of a building, and now seeks to recover damages which, prima facie at least, appear to relate to that contract. Indeed, in Testan the Supreme Court was careful to observe:

"The respondents do not rest their claims upon a contract; neither do they seek the return of money paid by them to the Government." 44 U.S.L.W. at p. 4248.

That is sufficient to distinguish the present case on the facts, although the right of the present plaintiff to demand a return of money paid by him to the Government is limited, in the circumstances of the case.¹

The Government's brief in support of the motion to dismiss states that the Administrative Procedure Act is "the only statute arguably applicable" to the present plaintiff's case, and that such statute does not specifically provide for money damages. However, 28 U.S.C. §1346(a)(2) confers jurisdiction upon this court in respect of a civil action or claim against the United States, "not exceeding \$10,000 in amount,...founded upon any express or implied contract with the United States..." The Government's brief does not address the question of whether or not jurisdiction over the present case may be founded upon this statute. It is not a fatal obstacle to jurisdiction that plaintiff is claiming \$15,000 against the V.A., since it is well established that if the plaintiff is willing to waive the amount in excess of \$10,000 limitation specified in the statute, the court retains jurisdiction. United States v. Johnson, 153 F.2d 846, 848 (9th Cir. 1946).²

The key question, which the Government does not address in its present motion papers, is whether the present complaint does, in fact, allege a claim "founded upon any express or implied contract

with the United States", within the meaning of 28 U.S.C. §1346 (a)(2). For the purposes of this motion, of course, the court must regard plaintiff's allegations in the manner most favorable to plaintiff, and assume the accuracy of the allegations. Viewed in the light of those principles, plaintiff complains that the V.A. knew of the pending demolition of the building at the time of its sale to plaintiff, and concealed that fact from plaintiff. Assuming for the purposes of this motion the truth of those allegations, the essence of the claim should perhaps nonetheless be regarded as sounding in tort, not in contract, and further, arising out of "misrepresentation, deceit, or interference with contract rights". If that characterization of the claim be appropriate, then jurisdiction is excluded by the provisions of 28 U.S.C. §2680(h).

The parties are directed to submit further memoranda addressed to the jurisdiction of this court under the statutory provisions just referred to. Those memoranda are to be filed and served not later than August 19, 1976, the date originally scheduled for the depositions of the V.A. witnesses. Those depositions will be adjourned, without date, until the court has ruled upon the motion to dismiss.

For the reasons stated above, a decision on that motion is reserved pending consideration by the court of the additional memoranda requested herein.

While the plaintiff is entitled to submit an additional memorandum on the jurisdictional question discussed above, the court will give no consideration to any further communications from plaintiff in which the veracity or good faith of Government

counsel or the court are called into question. That sort of comment, which has unfortunately characterized much of the plaintiff's presentations to the court in the past, accomplishes nothing for the plaintiff. If it is at all possible for the plaintiff to obtain legal advice in connection with the present motion, the court encourages him to do so.

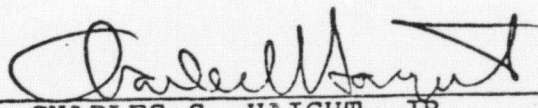
As noted above, the Government prays in the alternative for an order vacating the notices of deposition. That prayer for a protective order, based upon Rule 30(b), F.R.C.P., which inter alia permits orders that depositions shall not be taken if necessary "to protect the party or witness from annoyance, embarrassment, or oppression," assumes that the plaintiff will behave at the depositions in conformity with the unseemly, abusive and intemperate attitude evidenced by his prior written submissions. While the court certainly does not condone those prior expressions, it is not prepared to assume that the plaintiff will misbehave himself if the jurisdictional motion is denied and the depositions go forward. The court wishes it to be clearly understood, however, that if jurisdiction is retained, so that the depositions go forward, the plaintiff will be expected to examine the Government's witnesses in accordance with that spirit of propriety and decorum which underlies the pre-trial discovery rules. Any abuse of that spirit by the plaintiff during the depositions may lead to a protective order limiting or terminating the depositions, if the need for such an order arises.

In summary, decision on the Government's motion to dismiss the complaint is reserved; the parties are directed to submit

additional memoranda on the jurisdictional question discussed above, not later than August 19, 1976; and the depositions scheduled for that date are adjourned without date, pending the further order of the court.

It is So Ordered.

Dated: New York, New York
July 28, 1976



CHARLES S. HAIGHT, JR.
U. S. D. J.

1. The Government's affidavit in support of the motion to dismiss states (para. 23) that plaintiff's mortgage payments on the 165th Street property have been in default since August 1, 1972, and that only one payment on the mortgage in the amount of \$142.00 has been made. That statement is not controverted by plaintiff.
2. If the Government's motion to dismiss is ultimately denied, plaintiff will be required to waive any claim in excess of \$10,000 in order to preserve this Court's jurisdiction.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
FILED 8-19-76
S.D. of NEW YORK

-----x
ISRAEL MILLSAP, :

Plaintiff, :

-v- :

75 Civ. 5160 CSH

CITY OF NEW YORK, DONALD E. :
JOHNSON, or his successor, :

Defendant :
-----x

SUPPLEMENTAL MEMORANDUM OF LAW

ROBERT B. FISKE, JR
United States Attorney for the
Southern District of New York
Attorney for Donald E. Johnson

V. PAMELA DAVIS
Assistant United States Attorney
Of Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

ISRAEL MILLSAP,

Plaintiff,

-v-

CITY OF NEW YORK, DONALD E.
JOHNSON, or his successor,

Defendant

-----X

75 Civ. 5160

SUPPLEMENTAL MEMORANDUM OF LAW

This memorandum is submitted in further support of defendant Donald Johnson's previously filed motion to dismiss the plaintiff's complaint pursuant to Rule 12(b) (1) and (6) of the Federal Rules of Civil Procedure.

STATEMENT

All of the relevant facts and the procedural history of this action are fully set forth in the Memorandum of Law submitted in support of the motion to dismiss.

POINT I

PLAINTIFF'S CAUSE OF ACTION
SOUNDS IN TORT AND THEREFORE
MAY NOT BE MAINTAINED PURSUANT
TO TITLE 28, UNITED STATES CODE,
SECTION 1491

The building on the property at 655 East 165th Street, Bronx, New York was demolished by the City of New York, not by the Veterans Administration.

The contract between plaintiff and the Veterans Administration for the purchase of the property was executed on April 15, 1972; it was breached by plaintiff by failure to pay the installments due on the contract on August 1, 1972 and ^{he} has continued to breach the contract for each additional installment to date.

Plaintiff knew that there were "liens and violations" on the building in October of 1972 since he alleged such "liens and violations" in his complaint in Millard v. Johnson, 72 Civ. 4418. According to plaintiff's complaint herein, the City of New York did not proceed to demolish the building until April of 1974. Incredible as it may seem, plaintiff alleges that he had no knowledge of the demolition until May of 1975, over a year later.

Plaintiff has alleged that at some point prior to the demolition of the building by New York City, the Veterans Administration was apprised of such impending action but failed to so apprise the plaintiff. Thus,

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plaintiff's cause of action is that the personnel of the Veterans Administration negligently or wilfully failed to notify plaintiff that New York City intended to demolish the building. Such a cause of action, negligent or unreasonable delay on the part of government officials, sounds in tort Excavating Equipment Dealers v. United States, 93 Ct. Cls. 82 (1941), and is not cognizable under the Tucker Act, 28 U.S.C. §1491. Pearson v. United States, 267 U.S. 423 (1925); Schillinger v. United States, 155 U.S. 163 (1894).

The Tucker Act, 28 U.S.C. § 1491 is a waiver of sovereign immunity for suit against the United State on express or implied contract. Even if the contract for the sale of the subject property (Exhibit B to affidavit of V. Pamela Davis, dated July 6, 1976) survived plaintiff's continuing breach, nowhere in its two pages is there an express duty on the part of the Veterans Administration to continue to provide plaintiff with information concerning the property. On the contrary, by its express terms the property was sold "as is" with no warranties whatsoever. Millsap v. Johnson, 72 Civ. 4418 (SJR).

Nor can any such contract be fairly implied. To give rise to an implied contract upon which plaintiff could sue there must have been consideration moving to the United States. Somali Development Bank v. United States, 508 F.2d

817 (Ct.Cls. 1974). Here, the only consideration was the purchase price for the sale of an "as is" property, an express contract as to which plaintiff, and not the Veterans Administration, has failed to perform. An implied contract further requires a "meeting of the minds", a contract which can be inferred in fact from the conduct of the parties. Porter v. United States, 496 F.2d 583 (Ct.Cls. 1974). Plaintiff's complaint is devoid of any such allegations.

Even going beyond the four corners of plaintiff's pro se complaint and weighing, as a whole, his submissions, his essential position is that the letter from the Veterans Administration informing him of New York City's pending demolition was either negligently or wilfully misaddressed or otherwise not intended to be received by plaintiff. These are allegations sounding in tort and fail to state a claim against the United States as to which relief can be granted.

CONCLUSION

For the foregoing reasons, defendant's motion to dismiss the complaint should be granted.

Respectfully submitted,

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for Donald Johnson

V. PAMELA DAVIS
Assistant United States Attorney
Of Counsel

Form 280 A-Affidavit of Service by Mail
Rev. 12/75

AFFIDAVIT OF MAILING

State of New York)
County of New York) ss

MANUEL BERMUDEZ being duly sworn,
deposes and says that he is employed in the Office of the
United States Attorney for the Southern District of New York.

That on the
18th day of August, 1976 he served a copy of the
within Gov'ts Memo Law

by placing the same in a properly postpaid franked envelope addressed:

ISRAEL MILLSAP, 9537 PRARIS AV., CHICAGO, ILL. 60628.

And deponent further says ___ he sealed the said envelope ___ and placed the same in the mail chute drop for mailing in the United States Courthouse Annex, One St. Andrews Plaza, Borough of Manhattan, City of New York.

Sworn to before me this

18th day of August, 19 76

LAWRENCE MASON
Notary Public, State of New York
No. 03-2572560
Qualified in Bronx County
Commission Expires March 27, 1977

United States District
Southern District Court
of New York

Donald Mullaly

US

DE Johnson
on his
Successors

A 123

75C 5160

I have been duly sworn
that I am a Resident of Chicago
and live in Ill State.
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have been since and are pending
in Supreme Court of New York
the Court have power
to award money judgement
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annulment of the Building at
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in the City of New York.
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by U. panelia to aim
to delay the case. This
is also trick by U. panelia
to aim for not to panelia
Steve Wilson

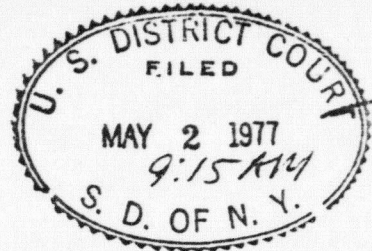
This is the same old trick
 that the state of Mississippi
 use against U.S. State of Supreme
 Court had to right to send
 troops in to Mississippi so after
~~the~~ School to negro
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 V. Pamela and the Veterans
 administration will keep
 on cheating and lying
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 the City of New York
 about the devaluation
 before they sold it to me.
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 places. Veterans administration
 and not tell them about
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 such thing to go on in
 U.S. and the State of New York
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 to do with the ~~defrauder~~
 defrauder. She don't wanted
 the V.A. and all these fraud
 to come to attention to
 American people and court

Israel M. M. M. M.
 9537 Francisco
 Chicago Ill 60628

McLure
75-3447
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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A 126



----- -x
ISRAEL MILLSAP, :

Plaintiff, :

75 Civ. 5160-CSH

-against- :

MEMORANDUM OPINION AND ORDER

D. E. JOHNSON, his successor, :
VETERANS ADMINISTRATION, :

Defendants. :
----- -x

45852

Appearances:

ISRAEL MILLSAP, Pro Se
9537 Prairie Avenue South
Chicago, Illinois 60628

ROBERT B. FISKE, JR., ESQ.
United States Attorney
One St. Andrew's Plaza
New York, New York 10007
Attorney for Defendants
V. Pamela Davis,
Assistant U.S. Attorney,
Of Counsel.

HAIGHT, District Judge:

Defendant moves to dismiss the complaint in this
action. The question before the Court, stated most concisely,
is: Has the plaintiff alleged a cause of action cognizable
under an appropriate federal statute?

FACTS

In 1972, the plaintiff purchased three buildings
from the Veterans Administration ("V.A."). Later that year,

plaintiff filed a complaint [72 Civ.4418] against Donald E. Johnson, V.A. administrator, alleging that the buildings were covered by liens and violations, and were not fit to live in. The Government moved for summary judgment, arguing that the buildings were sold on an "as is" basis, without any warranties. The motion for summary judgment was granted. Subsequently, plaintiff moved under Rule 60(b), F.R.C.P., to reopen the judgment. That motion was denied, and said denial was affirmed by the Court of Appeals.

This present action was commenced by plaintiff in the Supreme Court of the State of New York, and removed to this Court by the Government. The complaint is against the City of New York, the Veterans Administration, and the V.A. administrator (Donald E. Johnson or his successor). The gravamen of this complaint is that the V.A. knew of the City's intent to demolish one of the buildings (655 East 165th Street, Bronx, N.Y.) and never informed plaintiff, thereby causing the building to be demolished without the plaintiff's knowledge. Plaintiff attributes V.A.'s failure to notify him to the V.A.'s alleged deceit and trickery.

This Court concerns itself at present solely with the complaint as it regards the V.A., from whom plaintiff demands the sum of \$15,000.

The Government moved to dismiss this complaint on the basis of res judicata, relying upon the grant of summary judgment in the earlier action, 72 Civ. 4418. Judge Pierce denied the motion to dismiss, on the grounds that the first claim did not

plead the demolition of the building, and that the plaintiff was not aware of the demolition at the time he filed that first suit.

The Government has once again moved for dismissal, this time arguing that this Court lacks the power to award plaintiff money damages based upon the circumstances of the case. In a Memorandum and Order dated July 28, 1976, decision on the Government's motion to dismiss was reserved, pending submission of additional memoranda on the question of the Court's jurisdiction to grant the relief requested. The matter to which these additional memoranda were to address themselves was stated in the Memorandum and Order as follows:

"The key question, which the Government does not address in its present motion papers, is whether the present complaint does, in fact, allege a claim 'founded upon any express or implied contract with the United States', within the meaning of 28 U.S.C. §1346(a)(2). For the purposes of this motion, of course, the court must regard plaintiff's allegations in the manner most favorable to plaintiff, and assume the accuracy of the allegations. Viewed in the light of those principles, plaintiff complains that the V.A. knew of the pending demolition of the building at the time of its sale to plaintiff, and concealed that fact from plaintiff. Assuming for the purposes of this motion the truth of those allegations, the essence of the claim should perhaps nonetheless be regarded as sounding in tort, not in contract, and further, arising out of 'misrepresentation, deceit, or interference with contract rights'. If that characterization of the claim be appropriate, then jurisdiction is excluded by the provisions of 28 U.S.C. §2680(h)." (Memorandum and Order, 75 Civ. 5160, July 28, 1976, at 4.)

CONCLUSIONS

The plaintiff's cause of action sounds in tort, and is not cognizable by this Court. A study of the relevant federal law compels such a conclusion.

28 U.S.C. §1491 sets forth the jurisdiction of the Court of Claims as follows:

"The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States or for liquidated or unliquidated damages in cases not sounding in tort."

The district courts are given concurrent jurisdiction of certain claims, and exclusive jurisdiction of certain other claims, against the United States, pursuant to 28 U.S.C. §1346. The relevant subdivisions of that section are:

"§1346. United States as defendant
(a) The district courts shall have original jurisdiction, concurrent with the Court of Claims, of:...

"(2) Any other civil action or claim against the United States, not exceeding \$10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

"(b) Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." (emphasis added)

28 U.S.C. §1346(a) is thus limited to non-tort claims, and §1346(b) is limited by chapter 171 (28 U.S.C. §2680). Under §2680, plaintiff has no cause of action, since §2680(h) is a barrier to "...[a]ny claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights." (emphasis added)

The plaintiff's complaint sets forth allegations which, if true, would constitute wilful and deceitful withholding of information, with the intent to cause economic injury to plaintiff. In light of the barrier to tort actions under 28 U.S.C. §§1346 and 1491, and the crystal clear prohibition of 28 U.S.C. §2870(h), the plaintiff's cause of action must be dismissed.

The courts have continually reiterated the proposition that the federal government is immune from tort suits except where such immunity has been waived, and, such waiver will not be implied by statute, unless the statute clearly states the type of liability intended. Pine Hill Coal Co. v. United States, 259 U.S. 191 (1922).

Recently, the Supreme Court reaffirmed this viewpoint. In United States v. Testan, 424 U.S. 392 (1976), the Court held that the Government was not liable for money damages in a suit brought under the Administrative Procedure Act, since the Act did not provide such a remedy. The Court's discussion of the rule of waiver of sovereign immunity is a cogent statement of law, and is controlling in the present case.

"It long has been established, of course, that the United States, as sovereign, 'is immune from suit save as it consents to be sued...and the terms of its consents to be sued in any court define that court's jurisdiction to entertain the suit.' United States v. Sherwood, 312 U.S. at 586. And it has been said, in a Court of Claims context, that a waiver of the traditional sovereign immunity 'cannot be implied but must be unequivocally expressed.' United States v. King, 395 U.S. at 4; Soriano v. United States, 352 U.S. 270, 276 (1957). Thus, except as Congress has consented to a cause of action against the United States, 'there is no jurisdiction in the Court of Claims more than in any other court to entertain suits against the United States.' United States v. Sherwood, 312 U.S. at 587-588." 424 U.S. at 399.

See also Modular Technics Corp. v. South Haven Houses Development Fund Company, Inc., 403 F.Supp. 204, 205 (E.D.N.Y. 1975), aff'd, 538 F.2d 311 (2d Cir. 1976).

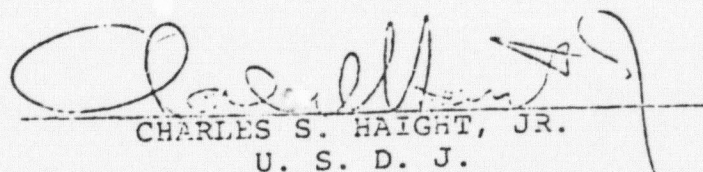
An important case in this circuit, touching upon the very question before this Court, is the case of Blitz v. Boog, 328 F.2d 596 (2d Cir. 1964). Blitz held that it is the substance of a claim which is controlling (328 F.2d at 599) and that the United States is not liable for intentional torts, even where the intentional tort was also an abuse of discretion. Blitz,

supra, at 598. The opinion was based on the court's interpretation of 28 U.S.C. §2680(h). In the present case, plaintiff sets forth allegations which charge the V.A. with the intentional torts of misrepresentation, and deceit. Both claims are thus barred specifically by statute, in addition to the rule discussed above, that the Government retains immunity except where specifically waived. Thus, in the case of this class of intentional torts, there is more than merely a failure to waive immunity; there is a specific retention of immunity. The district courts thus lack jurisdiction over suits based on such causes of action, as held in Blitz v. Boog, supra; see also Sanchez Tapia v. United States, 338 F.2d 416 (2d Cir. 1964). Whether plaintiff's allegations are termed deceit, or misrepresentation by omission, or interference with contract rights, the cause of action may not be brought in a federal district court.

Accordingly, the defendant's motion to dismiss is granted.

It is So Ordered.

Dated: New York, New York
May 2nd, 1977


CHARLES S. HAIGHT, JR.
U. S. D. J.

C.00M

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

----- X
ISRAEL MILLSAP

VS

D.E. Johnson
----- X

RECEIVED
JUN 4 10 58 AM '77
S.D.N.Y.
Action Number

75 CIV 5160
CSH

NOTICE OF APPEAL

TO

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Notice is hereby given that Israel Millsap

above named, hereby appeals to the United States Court of

Appeals for the Second Circuit from the * U.S. District Court
DECISION OF 5/2/77 GRANTING DEFENDANT'S
MOTION TO DISMISS.

Notice to:

Signed

Israel Millsap
9.5.37 Prime and Seal
By: Chicago File 6.0618
Deputy Clerk

* Insert whether order or final judgment,
or part thereof appealed from.

AFFIDAVIT OF MAILING

State of New York)
County of New York) #3

Pauline P. Troia being duly sworn,
deposes and says that she is employed in the Office of the
United States Attorney for the Southern District of New York.

That on the
two copies
11th day of January 19 78 she served ~~a~~ copy of the
within Appendix to Appellee's Brief

by placing the same in a properly postpaid franked envelope addressed:

Israel Millsap
9537 Prairie Avenue South
Chicago, Illinois 60628

And deponent further says s he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Courthouse Annex, One St. Andrews Plaza, Borough of Manhattan, City of New York.

Sworn to before me this

11th day of January, 19 78

Lawrence Mason

LAWRENCE MASON
Notary Public, State of New York
No. 68-2572500
Qualified in Bronx County
Commission Expires March 30, 1979